# ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

**ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು**

| ಸಂಪುಟ ೧೪೭ | ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಆಗಸ್ಟ್ ೩೦, ೨೦೧೨, (ಭಾದ್ರಪದ ೮, ಶಕ ವರ್ಷ ೧೯೩೪) | ಸಂಚಿಕೆ ೩೫ |
|---|---|---|


## ಭಾಗ – ೪

## ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

**ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ**

**ಅಧಿಸೂಚನೆ**

**ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 22 ಕೇನಿಪ್ರ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 13ನೇ ಜೂನ್, 2012.**

2012ನೇ ಸಾಲಿನ ಫೆಬ್ರವರಿ 15ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O. 290(E) ದಿನಾಂಕ: 15–02–2012 ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

**MINISTRY OF COMMERCE AND INDUSTRY**

**(Department of Commerce)**

**NOTIFICATION**

**New Delhi, the 15th February, 2012.**

**No. 96 (RE-2010)/2009-2014**

**Subject:- Minimum Export Price of Onions.**

**S.O. 290(E).-** In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (No. 22 of 1992), read with Para 2.1 of the Foreign Trade Policy, 2009-2014, the Central Government makes the following amendment in Notification No. 94 (RE-2010)/2009-2014, dated 11-1-2012 read with Notification No.75 (RE-2010)/ 2009-2014, dated 20-9-2011 with immediate effect.

2 The " Minimum Export price (MEP) of US $ 150 per Metric Ton F.O.B or as notified by DGFT from time to time " as appearing in Para 2(I) of Notification No.94 (RE-2010)/2009-2014, dated 11-1-2012 for the item description at Serial Number 44.01 of Notification No. 75 (RE-2010)/2009-2014, dated 20-9-2011 is replaced by " Minimum Export price (MEP) of US $ 125 per Metric Ton F.O.B or as notified by DGFT from time to time "

**3. Effect of this notification :**

Minimum Export price (MEP of all varieties of onions excluding Bangalore Rose Onions and Krishnapuram Onions will be US $ 125 per Metric Ton F.O.B. It was US $ 150 per Metric Ton for general category onion as notified on 11-1-2012. For Bangalore Rose Onions and Krishnapuram Onions MEP will continue to be US $ 250 per M.T.

[F.No. 01/91/180/922/AM 08/ PC-III/ Export Cell]

ANUP K. PUJARI, Director General of Foreign Trade.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

**ಆರ್. ಆಂಜಿನಿ,**

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ

ಸರ್ಕಾರದ ಉಪಕಾರ್ಯದರ್ಶಿ,

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

**ಪಿ.ಆರ್. 40**

## ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

**ಅಧಿಸೂಚನೆ**

**ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 24 ಕೇನಿಪ್ರ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 26ನೇ ಜೂನ್, 2012.**

2012ನೇ ಸಾಲಿನ ಮಾರ್ಚ್ 6ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O. 384(E) , S.O. 385(E) ಮತ್ತು S.O. 386(E) ದಿನಾಂಕ: 06–03–2012 ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

## MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

**(Department of Personnel and Training)**

**NOTIFICATION**

**New Delhi, the 6th March, 2012.**

**S.O. 384(E).-** In pursuance of sub-section (3) of Section 12 of the Right to Information Act, 2005 (22 of 2005), the President is pleased to appoint Shri Basant Seth as the Information Commissioner with effect from the 1st March, 2012.

[F. No.R-4/26/2009-IR]

MAMTA KUNDRA, Jt Secy.

**NOTIFICATION**

**New Delhi, the 6th March, 2012.**

**S.O. 385(E).-** In pursuance of sub-section (3) of Section 12 of the Right to Information Act, 2005 (22 of 2005), the President is pleased to appoint Shri Vijai Sharma as the Information Commissioner with effect from the 1st March, 2012.

[F. No.R-4/26/2009-IR]

MAMTA KUNDRA, Jt Secy.

**NOTIFICATION**

**New Delhi, the 6th March, 2012.**

**S.O. 386(E).-** In pursuance of sub-section (3) of Section 12 of the Right to Information Act, 2005 (22 of 2005), the President is pleased to appoint Shri Rajiv Mathur as the Information Commissioner with effect from the 1st March, 2012.

[F. No.R-4/26/2009-IR]

MAMTA KUNDRA, Jt Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

**ಆರ್. ಆಂಜಿನಿ,**

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ

ಸರ್ಕಾರದ ಉಪಕಾರ್ಯದರ್ಶಿ,

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

**ಪಿ.ಆರ್. 41**

# ELECTION COMMISSION OF INDIA

**ELECTION COMMISSION OF INDIA, NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001**

**NOTIFICATION**

**Dated : 2nd July, 2012**

No. 82/KT-LA/(7/2008)/2012-In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Karnataka Dated 1st June, 2012 in Election Petition No. 7 of 2008.

## IN THE HIGH COURT OF KARNATAKA AT BANGALORE

**DATED THIS THE 1st DAY OF JUNE, 2012.**

**BEFORE**

**THE HON'BLE MR. JUSTICE D.V. SHYLENDRA KUMAR**

**Election Petition No. 7 of 2008**

**BETWEEN :**

MRS KAVITHA MAHESH
W/O MR K. MAHESH, AGED ABOUT 43 YEARS
R/AT NO. 63, MICHAEL PALYA, 1ST MAIN, 1ST CROSS,
NEW TIPPASANDRA POST, INDIRANAGAR, BANGALORE-560075 … **PETITIONER**

(Party in Person)

**AND :**

1. CHIEF ELECTION COMMISSIONER
AND ELECTION COMMISSIONERS
ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110 001.

2. THE CHIEF ELECTROL OFFICER
STATE OF KARNATAKA
DPAR (ELECTIONS)
OLD KGID BUILDING ANNEXEE
DR. AMBEDKAR ROAD, BANGALORE-560 001

3. THE DISTRICT ELECTORAL OFFICER
BANGALORE URBAN DISTRICT, BANGALORE

4. THE RETURNING OFFICER
KR PURAM CONSTITUENCY, BANGALORE

**(VIDE ORDER DATED 31/7/2008, R1 TO R4 ARE DELETED)**

5. SRI N.S. NANDISH REDDY
S/O SRI N.C. SRINIVASA REDDY
AGED YEARS
R/AT GOWRASRI NILAYA
DODDANEKUNDI,
BANGALORE-560037 … **RESPONDENTS**

(By Sri Shashikantha C.Adv for R-5)

THIS ELECTION PETITION FILED U/S. 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, PRAYING TO DECLARE THAT ELECTION TO K R PURA ASSEMBLY CONSTITUENCY AS NULL AND VOID AND ORDER FRESH ELECTIONS IN THE INTEREST OF JUSTICE AND EQUITY, AS THE PETITIONER IS ENTITLED FOR RELIEF U/S 100(1)[C] OF THE REPRESENTATION OF PEOPLE ACT, 1951, SINCE REJECTION OF PETITIONER'S NOMINATION PAPER AT THE THRESHOLD BY THE 4$^{TH}$ RESPONDENT IS ILLEGAL AND IMPROPER AND DIRECT R1 TO INITIATE SUITABLE DISCIPLINARY ACTION AGAINST R4 AS PER PROVISIONS OF REPRESENTATION OF PEOPLE ACT. 1951 SO THAT IT SERVES AS A DETERRENT AND DISCOURAGE SUCH OFFICERS FROM VIOLATING THE STATUTORY LAW AND HELPS IN UPHOLDING THE CONSTITUTIONAL RIGHTS OF THE CITIZENS IN GENERAL AND PETITIONER IN PARTICULAR AND ETC.

THIS ELECTION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 9-9-2011. COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY. THE COURT MADE THE FOLLOWING:

**ORDER**

This election petition under section 81 of the Representation of People Act, 1951 (for short 'the Act'), is by a person who had aspired to be an independent candidate to contest the election for seeking the support of electors of K.R. Pura Legislative Assembly Constituency in Bangalore Urban District to respresent this constituency as a Member of the Karnataka State Legislative Assembly in the elections to the Karnataka State Legislative Assembly held during the year 2008.

2. Election petitioner did not even become a candidate whose name figured in the list of candidates figuring in the ballot paper as it is pleaded in the petition that the efforts on the part of the petitioner to become a candidate was thwarted by the Returning Officer. 151-K.R. Pura Legislative Assembly Constituency as it is the case of the petitioner that the returning officer did not even receive the nomination papers of the petitioner which were sought to be presented on 23-4-2008- the last day for filing nominations as per the following calendar of events that had been notified in the name of the Governor of the State under section 15 of the Act.

| | |
|---|---|
| Last date for filing Nominations | 23$^{rd}$ April 2008 |
| Scrutiny of Nomination Papers | 24$^{th}$ April 2008 |
| Last date for withdrawal of Nominations | 25$^{th}$ April 2008 |
| Date of Poll | 10$^{th}$ May 2008 |
| Counting of Votes | 25$^{th}$ May 2008 |
| Publication of Result | 27$^{th}$ May 2008 |

3. The results of the elections were declared by the returning officer as per the calendar of events on 27-5-2008. Respondent- N.S. Nandish Reddy was declared as the successful candidate. This respondent though originally figured as fifth respondent in the election petition. Respondents 1 to 4 – Chief Election Commissioner & Election Commissioners-Election Commission of India. The Chief Electoral Officer-State of Karnataka. The District Electoral Officer-Bangalore-Urban District. The Returning Officer, K.R. Puram Constituency respectively, but the other four respondents having all been deleted with the permission of the court, as per the order dated 31-7-2008, the returned candidate alone figures as the respondent to the election petition as of now.

4. The election petition has been presented seeking for a declaration that elections to K.R. Pura Legislative Assembly Constituency as declared by the returning officer on 27-5-2008 is null and void due to the reason of the illegal and improper rejection of the petitioner's nomination paper and therefore the election petition was presented for the relief on the ground of improper rejection of the petitioner's nomination paper and seeking for relief in terms of section 100 (1)[c] of the Act.

5. Election petition averments are that the petitioner had aspired to be a candidate to contest for K.R. Pura Legislative Assembly Constituency to seek election from this Assembly Constituency to the Karnataka State Legislative Assembly and with

such intentions she had prepared herself and had sought to present her nomination before the returning officer on 23-4-2008 ; that on one pretext or the other, the returning officer did not receive her nomination papers at all during the permitted hours but had made her to run from pillar to post and had later declined to receive nomination paper on the pretext of the permitted time for filling nomination papers having been over which had given cause of action for presenting the election petition.

6. It is the averment in the election petition that the petitioner was an elector in the erstwhile Varthur Assembly Constituency which had come to be split into three constituencies. (a) Mahadevapura (b) C.V. Raman Nagar and (c) K.R. Pura, following delimitation of the assembly constituencies in the State ; that after delimitation, the petitioner figured as an elector from C.V. Raman Nagar constituency ; that her name figured in the electoral role of this constituency in Part No. 75, serial No. 1086, but she had made attempts to present her nomination papers for contesting as an independent candidate from K.R. Pura Legislative Assembly Constituency.

7. Election petition averments also indicated that the petitioner's name prior to the year 1999 was Mrs. Kavitha Mageshwaran and in the year 1999. it was changed to Mrs. Kavitha Mahesh ; that change in her name has figured in the electoral photo identity card (for short 'EPIC') issued to the petitioner on 8-6-2003 under photo identity card No. HGB5369723, Part No. 143 and Serial No. 1083.

8. It is also the averments in the election petition that the nomination papers presented by the petitioner were in Form-2B and consisted of six parts-Part-I to Part-VI which was also accompanied by an affidavit in Kannada language in Form-26 and an affidavit declaring wealth details produced as Annexure-C to the election petition.

9. It is averred in the election petition that the petitioner had noticed the mistake in printing her name in the electoral roll of C.V. Raman Nagar Constituency only on 22-4-2008 as she found that her old name i.e., Mrs. Kavitha Mageshwaran figured in the list instead of Mrs. Kavitha Mahesh and her husband was instead described as name of the father and due to this mistake, petitioner had submitted along with the nomination paper her affidavit duly notarised indicating such mistake having crept in the electoral roll insofar as the description of her name is concerned.

10. It is also the averment that the petitioner had obtained signatures of ten proposers in Part-II of the nomination papers and also two copies of EPIC attested by the electors themselves and had produced copies of the same along with the election petition as Annexures-G to N reading as under :

"Proposer Serial No. 1 is marked as Annexure-G
Proposer Serial No. 2 is marked as Annexure-H
Proposer Serial No. 3 and 4 is marked as Annexure-J
Proposer Serial No. 5, 6 & 7 is marked as Annexure-G
Proposer Serial No. 8 is marked as Annexure-L
Proposer Serial No. 9 is marked as Annexure-M
Proposer Serial No. 10 is marked as Annexure-N"

11. It is pleaded that signatures of two additional proposers had also been obtained by the petitioner and copies of details of such proposers was sought to be produced along with the election petition as Annexure-O to the election petition.

12. It is further pleaded in the petition that when the petitioner made attempts to provide particulars such as part number and serial numbers in that part of the proposers in the electoral role of the constituency of the proposers, which are all information required to be given as indicated in part-II of the form No. 2B, which is the nomination paper, the petitioner encountered several difficulties in view of the recent delimitation of the constituencies and splitting up of erstwhile Varthur assembly constituency. It is pleaded in this regard that the petitioner could not find the names of her proposers in the new part number as indicated and also their names could not be found in the electoral role concerned. Petitioner's efforts to get correct particulars from the revenue officials were also not fruitful, as the revenue officials were also not in a position to provide the entire electoral rolls of K.R. Pura Legislative Assembly Constituency to enable the petitioner to extract the required new part number and serial numbers in that part of the proposers for being mentioned in part-II of form No. 2B.

13. It is further pleaded that the petitioner, without the details such as part number and serial numbers in that part of the proposers, approached the returning officer of K.R. Pura Legislative Assembly Constituency at 1400 hours on 23-4-2008 and delivered her nomination papers together with all annexures and also made a request to him to provide her latest electoral rolls of K.R. Pura Legislative Assembly Constituency to enable her to extract the new part number and serial numbers in that part of her proposers, who had signed the nomination papers presented by the petitioner. It is pleaded that the returning officer expressed that he did not have in his possession the electoral rolls of K.R. Pura Legislative Assembly Constituency and asked the petitioner to approach the revenue officer located in the ground floor of the same building, if the petitioner wanted the same.

14. Further averment in the petition is that the petitioner made efforts to secure the electoral rolls by deputing her husband to fetch the same, but the efforts were not fruitful and as time was running out for the presentation of the nomination papers and that being the last day, she presented her nomination papers together with enclosures as indicated above before the returning officer with an intention of supplementing the information relating to part number and serial numbers in that part of the proposers by or before the scrutiny of nomination papers scheduled to be taken place the next day. It is pleaded that petitioner explained the reason for non-mentioning of the said particulars and requested the returning officer to receive her nomination paper and permit her to fill up or supplement the particulars such as part number and serial numbers in that part of the proposers before the scrutiny time.

15. It is pleaded in the petition that the returning officer did not respond in a positive manner, but flared up and commented that he was not inclined to listen her stories and that he would not receive the nomination papers without complying with the requirements of new part number and serial number being mentioned against the name of the proposers in part-II of the nomination paper. It is also pleaded that the returning officer told the petitioner that if she should compel him to accept the incomplete nomination paper. He would reject the same next day. It is further pleaded in the petition that the petitioner realizing the animosity of the returning officer towards her by way of unworthy comments and the tenor and tone of the language of the returning officer, which, according to the petitioner, was indicative of a pre-determined ulterior motive on the part of the returning officer, gave a written representation to the returning officer requesting him to accept the nomination paper, as the petitioner was providing Xerox copies of the proposers EPICs in the absence of part number and serial numbers of the proposers against their names figured in the electoral roll of the constituency, which petitioner was not able to secure on that day. A copy of this letter dated 23-4-2008 has been produced along with the election petition as Annexure-P.

16. It is further pleaded in the petition that the returning officer continued to react in a hostile manner, refused to receive petitioner's nomination paper and commented that he would neither receive the nomination paper nor the representation nor would acknowledge any receipt and that the petitioner cannot blame others for her negligence in not securing such information. It is pleaded that such conduct on the part of the returning officer. Which was not merely illegal, violative of statutory provisions and guidelines issued by the election commission of India, but also outright discourteous and humiliating to the petitioner and inevitably the petitioner was made to believe that the returning officer was prejudiced against her and had a set mind to refuse her nomination paper with some ulterior motive, which forced the petitioner to leave the premises being humiliated and insulted by illegal and improper rejection of her nomination paper by the very returning officer, who was required to be neutral and act in a responsible manner.

17. It is further pleaded that the incident left the petitioner benumbed for some time and it is only after four days. Petitioner could muster courage and confidence to lodge a written complaint to the chief election commissioner of India. New Delhi, about the illegal and improper rejection of the nomination paper of the petitioner by the returning officer. It is averred that the complaint was sent by speed post with acknowledgement due and the petitioner received the acknowledgement. Copies of the complaint dated 28-4-2008 sent by the petitioner to the chief election commissioner of India, receipt for having sent the complaint through speed post and the certificate for delivery of the consignment to the addressee issued by the post office at HAL II Stage, are produced along with the election petition at Annexure-Q. R and S respectively. Newspaper clippings indicating the inaccuracies in the delimitation process and updating the electoral rolls of several constituencies in the Bangalore urban areas are sought to be produced at Annexure-T. U and V to the election petition. Which, according tot the petitioner, support her plead that there was considerable confusion in the process of delimitation of constituencies.

18. It is pleaded that the petitioner's right to contest as an-independent candidate in the K.R. Pura Legislative Assembly Constituency in the elections held during 2008 has been denied to her by the arbitrary manner of functioning of the returning officer and by improper rejection of her nomination paper. The conduct on the part the returning officer, according to petitioner, is contrary to the provisions of Sections 35, 36(4) and 36(5) of the Act. Further plea is that such conduct of the returning officer is a clear disregard of the guidlines and instructions issued by election commission of India. Which, according to the petitioner, is illegal, as it has prevented her from contesting the election as an independent candidate, as even her nomination paper was not received by the returning officer.

19. It is the further plea of the petitioner that as the petitioner had not received commensurate response from the election commission of India to her representation dated 28-4-2009, she had preferred a writ petition before this court in WP No. 7225 of 2008, but this court rejected the petition as per order dated 20-5-2008, a copy of which is produced at Annexure-W to the writ petition.

20. It is pleaded that as the electoral process was completed even without petitioner's cmplaint to the election commission of India being redressed and the respondent had been delared as the returned candidate from K.R. Pura Legislative Assembly Constituency in gazette notification dated 27-5-2008, a copy of which is produced at Annexure-X to the election petition, and as the petitioner was denied an apportunity to contest the election by the improper and illegal rejection of her nomination paper, she has been compelled to present the election petition seeking for the relief of declaration that the election to K.R. Pura Legislative Assembly Constituency held during April/May 2008 as null and voild and set aside the election of the respondent and to direct fresh election to be conducted to this constituency. Petitioner has also sought for initiation of suitable disciplinary action against the returning officer for his illegal conduct as per the provisions of the Act.

21. It is urged in the petition that non-receipt of the nomination paper presented by the petitioner amounts to improper rejection of her nomination paper ; that the returning officer has failed to perform his duty by not receiving the nomination paper presented by the petitioner ; that he has acted not only in violation of Sections 35, 36(4) and 36(5) of the Act, but also contrary to the guidlines and instructions issued by the election commission of India to all the returning officers in the hand book for returning officers being the cause for the presentation of the present election petition.

22. It is also urged that the conduct of the returning officer was not only highly arbitrary and abuse of his powers and one of insulting and humiliating the petitioner, but also denying her fundamental right to contest the election as an independent candidate from K.R. Pura Legislative Assembly Constituency.

23. Election petition is also accompanied by an affidavit of the petitioner, stating in great detail the petition averments and verifying the contents of the petition. Indicating that the first part of the petition in paras 1 to 9 contain averments which are true and correct to the best of petitioner's knowledge, information and belief and the contents in part-II-grounds-are true to the petitioner's knowledge and Part-III containing prayer column in the petition are true and correct to the petitioner's knowledge and belief. It is also verified that Annexures A to V accompanying the election petition are true copies and Annexures-W to Z are originals and Annexure-ZA is certified copy.

24. Notice was ordered to the sole respondent on 19-9-2008 after this court permitted the petitioner to delete the original respondents 1 to 4 from the array of respondents and as per the order passed on 31-7-2008. Fresh notice was ordered to the respondent on 22-9-2008 and the petitioner was permitted to take out substituted service on the respondent.

25. Respondent entered appearance through counsel Sri C Shashikantha and filed his written statement along with an application seeking for condoning the delay. If any, in filing the written statement and with the petitioner agreeing for allowing the application in terms, the application was ordered on payment of cost of Rs. 2,000/- in favour of the petitioner and the written statement was received on record. Petitioner also filed rejoinder and this was permitted as per the order dated 22-4-2009.

26. In the written statement filed on behalf of the respondent, it was averred that the election petition was not tenable either in law or on facts and liable to be dismissed ; that the election petition is not presented in accordance with the procedure prescribed in law; that proper verification as per law has not been made nor required number of copies had been filed along

with the election petition ; that prayer in the election petition is not precise and therefore the petition should be dismissed ; that the election petition is not tenable in terms of Section 81 of the Act, as the petitioner had not filed the petition as an elector nor is she a candidate, as she was never a duly nominated candidate for the election in question ; that there is no cause of action disclosed in the election petition and the petitioner has not made out any ground for presenting the petition within the scope of Section 100 [1][c] of the Act and she is not entitled for the relief sought for in the election petition.

27. It is also pleaded in the written statement that petition averments in so far as they related to allegations or statement in respect of original respondents 1 to 4 are unnecessary. frivolous and vexatious, whereas the answering respondent is the only respondent in the election petition after the petitioner deleted the erstwhile respondents 1 to 4 from the array of respondents and therefore all such pleas are required to be deleted from the petition pleadings.

28. While certain averments to the knowledge of the election petitioner in the election petition are not admitted by the respondent. petitioner is to put strict proof of the same. It is pleaded in the written statement with reference to the averments contained in para-I(2) of the election petition that the nomination papers as produced at Annexure-A to the election petition is not filled up in, accordance with law, petitioner in the election petition has also not given the part number and serial numbers of petitioner as also her proposers as found in the latest electoral roll which had been published before the conduct of elections ; that the respondent does not admit petitioner being an elector in the State of Karnataka having her name in any electoral roll and also her alleged 12 proposers names is not to be found in the electoral rolls of K.R. Pura Legislative Assembly Constituency and the petitioner is put to strict proof of the same. Contents of Annexure-A to the election petition are not admitted; that it is not even properly filled up no specific particulars are forthcoming therein; that the so-called signature of 12 proposers in para-11 of Annexure-A are not admitted.

29. It is averred that Annexure-A to the election petition cannot be accepted as a proper nomination paper and the contents and correctness of Annexure-B affidavit accompanying the nomination paper are also disputed and the petitioner is put to strict proof of the same. Respondent has pointed out that the so-called affidavit is one in the context of contesting election for a local body. Though K.R. Pura Constituency is mentioned, it is not in the contest of elections from the K.R. Pura Legislative Assembly Constituency held during 2008 and there is a clear attempt on the part of petitioner to misrepresent and mislead this court as though the affidavit is one in the context of elelction to the Karnataka Legilative Assembly. The discrepancies in Annexure-C affidavit are also pointed out and the respondent while does not admit them but seeks to put the onus on the petitioner in respect of the contents of this affidavit also.

30. With regard to the averment in the petition also and in the context of other annexures to the election petition, the respondent has pointed out that the discrepancies, procedural inadequacies, has generally denied the contents to be true or proper and requires the petitioner to prove the same.

31. With regard to contents in para I(7) of the election petition, respondent has specifically denied the averments particularly the petitioner approaching the returning officer with duly filled in nomination papers along with the required annexures to present the ame at 1400 hours on 23-4-2008 and the same having been delivered to the returning officer as a state far from truth. Apart from pointing out the anomaly of the referring to the returning officer as fourth respondent in the petition, while the answering responded figured as respondent, it is also pleaded that the answering respondent had filed his nomination papers on the very day at 11.30 am ; that he again came to the returning officer's office around 1.20 pm and out of curiosity was present in the said office to know the details of all the candidates who have filed nomination papers till the last minute on the last day and for this purpose the answering respondent was resent in the office of the returning officer from 1.00 pm to 4.00 pm on 23-4-2008 ; that during that time the petitioner has not come to file her nomination papers before the returning officer and the answering respondent after reading the list of persons who have filed nomination papers for the election, which was published on the notice board of the office of the returning officer at 4.00 pm on that day, left the office of the returning officer.

32. It is also averred that the election petitioner had not deposited a sum of Rs. 5,000/- towards security deposit which was required to be presented along with the nomination papers by or before the time fixed for filing nomination papers on that date. In the circumstances, it is pleaded to be as proof of the fact that the petitioner had not visited the office of the returning officer but

has filed the election petition making false and misleading statements so as to achieve her ulterior motive. Non-deposit of the security amount and not filing of the nomination papers until 3.00 pm on 23-4-2008 reveals thoroughly negligent act on the part of petitioner throughout. There was no complaint filed by the petitioner even before the designated observers from the election commission of India, though their addresses and mobile numbers had been published in advance. It is pleaded that there is no evidence whatsoever to show that the petitioner had visited the office of the returning officer on 23-4-2008 and therefore it is further pleaded that delivery of nomination papers together with all annexures and the request to the returning officer for providing latest electoral rolls of K.R. Pura Legislative Assembly Constituency on that day all do not arise and are false and misleading statements made by the petitioner.

33. It is also pleaded that averments made in the context of Annexure-P are denied and characterized as not containing true facts; that Annexure-Q, R and S though are true copies, not verified in the manner required for making them part of an election petition ; that the pleas in the context of these annexures are not facts but only a fiction churned out by the petitioner with ulterior motive and for presenting the election petition ; that the petitioner with mala fide intention of troubling the respondent and to dislodge him from the membership of K.R. Puram Assembly Constituency has filed the present petition.

34. In the context of Annexure –T, U and V, while it is pleaded that the said newspaper reports white cannot support the case of petitioner for the purpose of presenting the election petition, being in the nature of press reports, neither can constitute any document nor valid piece of evidence, which the court can accepted. Non-verification of copies of these documents is also pointed out to be a defect for accepting the same.

35. With regard to the averment of petitioner submitting a written complaint as per her letter dated 28-4-2008, respondent averred that the complaint lacks any substance or value ; that the returning officer has not committed any act of non-compliance with the statutory provisions of either Section 35 or Sections 36(4) and /or 36(5) of the Act or any other provisions of the Act nor has he violated any instructions or guidelines given by the election commission of India.

36. In the context of averments relating to the election petitioner having presented WP No. 7225 of 2008 and the order of dismissal passed thereon by this court, the respondent has pleaded that being a non-party to the petition, order therein neither binds nor in any way affects him or supports the present election petition ; that merely because liberty was reserved to the petitioner to present an election petition in the order passed in the writ petition, petitioner is not enabled to file and prosecute an election petition without valid grounds and contrary to the provisions of law.

37. With regard to Annexure-W also, non-attestation by the petitioner and non-verfication in the prescribed manner is pointed out. Same averments are made with reference to the pleadings in the context of Annexure-X.

38. In so far as averments in para-I(16) of the election petition is concerned, it is averred in the written statement that while the answering respondent was not aware of the effort on the part of the election petitioner to secure return of original documents filed along with the writ petition and the petitioner is to put strict proof of the same, what is sought to be produced as Annexure-Y cannot be made use of by the petitioner as such, unless it is made good in a manner known to law and as is required in an election petition.

39. With regard to contents by way of grounds in the election petition, respondent has generally pointed out that they are not tenable ; that reference to first and fourth respondents is meaningless, as there is only one respondent, which is the answering respondent to the election petition ; that the so-called rejection of nomination papers of the petitioner is only an imagination of the petitioner, as the petitioner had never presented a valid nomination paper before the returning officer ; that the negligence on the part of the petitioner either in not securing the latest electoral rolls of the constituency concerned or for not presenting the nomination papers within the permitted hours of the last day fixed for receiving nomination papers as per the calendar of events cannot affect the result of elctions, particularly of the K.R. Pura Legislative Assembly Constituency from which constituency the respondent had been declared elected and therefore urged for dismissal of the election petition.

40. After filing of written statement and receiving the same on record and after permitting the election petitioner to file rejoinder also, the matter was listed for framing of issues.

41. In the rejoinder filed by the petitioner to the written statement of the respondent, petitioner has pleaded that it is not open to the respondent to take up cudgels on behalf of others and to defend their action without leave of the court; that the pleadings contained to this effect in the written statement do not merit examination and has pointed out that such of those petition averments which the respondent has neither expressly denied nor not admitted by the respondent amounts to there being no dispute raised by the respondent in respect of such plea in the election petition, they will have to be taken as admitted as per the provisions of Order VIII Rule 1 of code of Civil Procedure, 1908 and as such the contents of para 1(2), 1(3) of the election petition in respect of such pleas which are neither not denied nor not admitted have to be taken as admitted by the respondent. For the very reason, petitioner has pleaded that the contents of para 1(5) of the election petition as responded to in para-11 of the written statement have to be admitted. Petitioner has also pointed out to the admission contained in para-13 of the written statement to the effect that the respondent though had filed his nomination papers at around 11.30 am on 23-4-2008, out of curiosity to know who are all filing their nomination papers and to know the fate of such nomination papers, had come back to the office of the returning officer at around 1 pm and that he stayed there in the office of the returning officer of the K.R. Pura Legislative Assembly Constituency from 1 pm to 4 pm on that day has clearly vindicated the stand of the petitioner and provided proof to the petitioner's allegation of the returning officer arbitrarily and illegally rejecting her nomination paper with ulterior motives; that her effort to present her nomination papers before the returning officer between 14.00 hours and 15.00 hours on 23-4-2008 had been deliberately and designedly thwarted and prevented by the returning officer at the behest of other interested persons and the respondent has not come out with full and true facts in his written statement ; that the admission is more revealing about the respondent exerting undue influence on the returning officer for the illegal and improper rejection of the petitioner's nomination paper by staying put in the office of the returning officer from 1 PM to 4 PM on that day which was an illegal presence and in violation of the laws and guidelines issued by the Election Commission to the returning officers.

42. However, on petitioner filing an application in Misc Civil NO. 10278 of 2009 under Section 151 CPC read with Section 87 of the Act and Article 14 of the Constitution of India, praying for adding back the original respondents 1 to 4, who had been deleted, yet again as parties to the election petition and this application having been dismissed on 31-7-2009 by a reasoned order, the matter was set down for framing of issues.

43. Thereafter, respondent came up with two applications viz., Misc Civil No 15204 of 2009 filed under Order VI Rule 16 CPC seeking for striking off of certain paragraphs in the election petition and para-13 of the rejoinder and other application in Misc Civil No. 15572 of 2009 filed under Sections 81, 83 and 86 of the Act read with Order VII Rule 11 CPC, praying for dismissal of the election petition. The said applications having been opposed by the election petitioner by filing objections, they were heard and disposed of as per two separate orders dated 8-10-2009 and 12-11-2009 respectively, dismissing both the applications by passing elaborate reasoned orders.

44. In the wake of the pleadings by petitioner and the respondent and after hearing learned counsel for the parties, the following issues were framed on 18-6-2010 :

1. Whether the petitioner proves that she was a candidate for the election to the Karnataka Legislative Assembly held on 10-5-2008 from the K.R. Pura Assembly Constituency, within the meaning of the provisions of Representation of People Act, 1951 [for short, the Act] to maintain a petition under Section 81 of the Act ?
2. Whether the petitioner proves that the papers presented by her before the Returning Officer as by way of nomination were nomination papers meriting scrutiny within the scope of Section 36 of the Act?
3. Whether the petitioner proves that she had made all efforts to re-present the nomination papers before the returning officer before 3.00 pm on 23-4-2008, even with certain deficiencies and with a request that her nomination papers should be received which will enable her to get another 24 hours to rectify the defects to make the nomination papers to be fully in consonance with the statutory provisions and further that the returning officer refused to receive the same. With or without any intention and such refusal amounts to rejection of her nomination papers?

4. Whether the petitioner proves that the conduct of the returning officer in not accepting her nomination papers could give rise to a doubt in her mind that the returning officer had a pre-determined mind not to receive the nomination papers of the petitioner ?

5. Whether the petitioner proves that she had lodged complaints before the Chief Election Commissioner and the Commissioners of Election calling upon them to act with their powers for the redressal of her grievance against the returning officer. In the wake of her nomination papers being not accepted by the returning officer ?

6. Whether the respondent (N.S. Nandish Reddy) proves that the election petition does not contain a concise statement of material facts leading to lack of cause of action ?

7. Whether the respondent (N.S. Nandish Reddy) proves that the averments in paragraphs 10 and 11 of the election petition and paragraph 13 of the rejoinder by the petitioner amount to allegation of corrupt practice within the meaning of Section 123 of the Act and therefore the election petition itself falls short o fthe requirement of the proviso to Section 83 of the Act and therefore the election petition deserves to the dismissed ?

8. Whether the respondent (N.S. Nandish Reddy) proves that the election petition is liable to be rejected under Section 86 of the Act because of the defects/mistakes highlighted in the written statement ?

9. Whether the respondent (N.S. Nandish Reddy) proves that the verification to the election pettion and annexures therewith are not made in accordance with law and therefore the election petition is liable to be rejected ?

10. Whether the respondent (N.S. Nandish Reddy) proves that the election petition is liable to be rejected because of non compliance with section 83 of the Act and defects highlighted in the written statement ?

11. Whether the respondent (N.S. Nandish Reddy) proves that the affidavit filed with the election petition is not prepared in accordance with law and therefore the election petition is libable to be rejected ?

12. Whether the petitioner has made out a case for allowing the election petition on the pleadings and grounds urged in the petition ?"

45. After all such initial hiccups, the election petition was set down for trial. In support of the petition, petitioner deposed herself as PW1 and examined her husband Mahesh as PW2 and the returning officer M Ashoka as PW3. While PWs 1 and 2 are cross-examined by learned counsel for the respondent, PW3 while is also cross-examined by the counsel for respondent, being the returning officer, for clarification, was called upon to answer on oath certain questions put by the court.

46. Peitioner has generally supported the petition pleadings. She has deposed that she was an elector in the erstwhile Varthur Constituency before delimitation of this constituency ; that after de-limitation this constituency has been split into three Assembly Constituencies, namely, (a) Mahadevapura (b) C.V. Raman Nagar and (c) K.R. Pura ; that her name figured at Sl. No. 1086 of Part 75 of the electoral roll of C.V. Raman Nagar Assembly Constituency ; that she had also noticed the error in the description of her name and her father's name in the electoral roll and that she has sworn to an affidavit indicating this error in the roll as she had changed her name from Mrs. Kavitha Mageshwaran to Mrs. Kavitha Mahesh in the year 1999 which does find a place in her EPIC. She has deposed that she has delivered her nomination papers after obtaining signatures of ten proposers signed on the nomination paper and also requested the returning officer for extracting new part number and serial number of the ten proposers so that it can be filled in Form-2B-Nomination Paper. It is deposed that the response of the retunring officer was that he did not have the electoral roll of K.R. Pura Legislative Assembly Constituency and that she should approach the revenue officials in the ground floor of the very building. Realizing her efforts for securing the electoral roll of K.R. Pura Legislative Assembly Constituency through her husband was not fruitful and also that it being the last day for presenting the nomination paper, she again

presented her nomination paper at 15.00 hours before the returning officer with a request that she will make good that by the next day by explaining the situation prevailing in the ground floor revenue office and again requested him to accept the nomination paper and would make good the deficiencies by the time of scrutiny the next day.

47. She has also further deposed that the returning officer immediately reacted that he will not accept her nomination paper and will not listen to her stories when it has not mentioned the correct part and serial number of the proposers as contained in the electoral roll and if she should compel him to accept the same, he will reject the nomination paper next day while scrutinizing the nomination paper. Petitioner has deposed that such conduct of the returning officer was uncalled for comments also were not justified and gave her an impression that he was prejudiced and had a pre-determined mind not to accept her nomination paper with some ulterior motive in his mind.

48. Petitioner has further deposed that as her oral request was not being heeded by the returning officer, she again presented the nomination paper Annexing the true copies of EPIC of all ten proposers, but the returning officer again refused to accept the nomination paper commenting that he will not receive her nomination paper ; that he will not also receive any representation and will not give any acknowledgement and receipt and saying that for her negligence, she cannot blame other people, he did not accept the nomination paper.

49. She has deposed in terms of the petition averments on the complaint said to have been sent to the Election Commission on 28-4-2008 and about filing of writ petition No. 7225 of 2008 before this court as there was no response from the Election Commission. But, the writ petition was dismissed reserving liberty to file the election petition if she chose to do ; that to seek redressal for improper rejection of her nomination paper by the returning officer, she has presented the election petition for declaration that the result of elections to 151, K.R. Pura Legislative Assembly Constituency is to be declined as *null and void* and therefore elections should be directed as the returning officer had improperly and illegally rejected the nomination paper of the petitioner.

50. The documentary evidence on behalf of the petitioner comprises of Ex-P1 to 24. Ex. C1 to C6 which are part of the official records produced by the officials before the court, were got marked at the instance of the court. Respondent did not examine any witness on his behalf nor has placed any documentary evidence before the court.

51. On behalf of the petitioner are marked documents Exhibits. P1 to P24. Exhibit P1 is Form 2B as per Rule 4 and is the nomination paper presented before the Returning Officer on 23-4-2008 as an independent candidate. Exhibit P2 is in Form No. 26 as per Rule 4A which was also sought to be presented before the Returning Officer. Exhibit P3 is Annexure-1 of the orginal nomination paper and affidavit to be furnished by candidates along with nomination paper before the Returning Officer. Exhibit. P4 is the certified copy of the extract of the electoral roll obtained from the Revenue office of C.V. Raman Nagar Revenue Office. With the name of the petitioner at Serial No. 1086 and Part No. 75 of the Electoral Roll. Which was sought to be produced along with the nomination paper Exhibit. P5 is an affidavit dated 23-4-2008 filed by the petitioner along with the nomination paper, submitted in the context of the error/mistake noticed in the name of the petitioner and her father in the electoral roll.

52. Exhibit . P6 is a Xerox copy of the EPIC of the petitioner issued by the Election Commission of India. Exhibit. P7 is postal receipt dated 29-4-2008 issued by Post Office. HAL II Stage, Bangalore. Exhibit. P8 is certificate of delivery note issued by Post Master, HAL II Stage, Bangalore. Exhibit P9 is the certified copy of the order dated 28-5-2008 passed in WP NO. 7225/2008 by this court. Exhibit P10 is the Gazette Notification dated 27-5-2008 issued by the Election Commission of India. New Delhi, published in Karnataka Gazette on 27-5-2008, containing the names of candidates declared elected to the General Elections held during the year 2008.

53. Exhibit. P11 is a memo dated 16-6-2008 filed by the petitioner before the High Court of Karnataka praying for return of all original documents. She had produced along with W.P. No. 7225/2008. Exhibit. P12 is the security deposit receipt dated 8-7-2008 for having received Rs. 2,000/- issued by the Deputy Registrar, High Court of Karnataka, evidencing the receipt, accompanied with the election petition. Exhibit. P13 is certified copy of the declaration of election result dated 25-5-2008 and issued by the Deputy Commissioner. Mahadevapura Zone, Bruhat Bangalore Mahanagara Palike, Bangalore-560048, showing the name of the candidate declared elected from 151, K.R. Pura Legislative Assembly Constituency. Exhibit P14 is a letter dated 18-5-2010 written by the

election petitioner and addressed to the Joint Commissioner, Mahadevapura Zonal Office, BBMP Bangalore, seeking for information pertaining to Karnataka State Assembly General Election 2008, of 151, K.R. Pura Legislative Assembly Constituency.

54. Exhibit. P15 is counter foil of postal order for Rs. 10/- dated 20-5-2010 bearing No. 68E 806798, which the petitioner has purchased in the name of Joint Commissioner, BBMP. Which is the fee required to be paid by the petitioner on the information which the petitioner has sought for from the Joint Commissioner, BBMP, Bangalore. Exhibit. P16 is copy of the letter dated 16-6-2010 occurring at page 11 of the application, affidavit and document which is sent from the Office of Joint Commissioner, BBMP, Mahadevapura, Bangalore-48, addressed to the Registrar, Electoral List Registration Officer, at 151 K.R. Pura Assembly Constituency, who is also the Public Information Officer of the Mahadevapura Zone of BBMP. Bangalore. Signed by Deputy Commissioner of the Mahadevapura Zone of BBMP Bangalore, apprising the official of application of the petitioner for information and in turn forwarding it to that office as the requisite information is available with the addressee.

55. Exhibit. P17 is the original postal cover in which the petitioner received the copy of the letter dated 16-6-2010. Exhibit. P18 is the letter dated 21-6-2010 which the petitioner received from the Revenue Officer, Electorol Registration Officer. 151, K.R. Pura Vidhana Sabha Kshetra, Bangalore 36, by post. Exhibit. P19 is the postal cover in which letter dated 21-6-2010 was received by the petitioner. Exhibit. P20 is the copy of the acknowledgment that the petitioner has endorsed at the time of receiving the 14 CDs consisting of a copy of the videograph of the events that took place in the Karnataka State Assembly General Election 2008, of K.R. Pura Assembly Constituency Serial No. 151, acknowledged on 1-7-2010 at the bottom of the letter dated 30-6-2010 from the office of the Deputy Commissioner District Electorol, signed by Deputy Commissioner, Mahadevapura Zone addressed to the Asst. Revenue Officer, 151, K.R.Pura Vidhana Sabha Kshetra.

56. Exhibit P21 to 24 are MPEGAV-2, MPEGAV-5, MPEGAV-6. MPEGAV-14 respectively. Which are in CD form issued by the office of the district election officer, BBMP, certifying as a true copy and bearing the date 1-7-2010. signed by Mr Chandrappa, FDA at the office, which has been given under the seal and direction of the office manager and Assistant Commissioner.

57. This witness has been cross examined. The line of cross examination is to suggest that she was not a serious candidate for contesting the K.R. Pura Legislative Assembly Constituency ; that she had never made any preparation much less proper preparation for presenting a duly filled nomination papers in form-2B ; that she never became a candidate by presenting a propoer nomination form ; that she had never even presented her nomination paper for acceptance ; that her present name as Smt. Kavitha Mahesh did not figure in the electoral roll of any constituency ; that she had falsely claimed to have changed her name to Smt. Kavitha Mehesh from Smt. Kavitha Mageshwaran in the year 1999 ; that she had never placed before the Returning Officer the particulars of ten proposers required to support her nomination paper by giving their roll number and part number in which they were electors ; that they were not genuine persons but fictitious persons; that signatures of ten persons are forged signatures ; that she had not even given true copies of the EPICs of these ten proposers ; that thought the entire current electoral list of 151, K.R. Pura Legislative Assembly Constituency was displayed on the Notice Board of CMC Office, K.R. Pura constituent Assembly she had not made efforts to obtain such electoral rolls in its entirety from the concerned Authority nor had she made any attempt to get it from the office of any recognized political party ; that she had falsely claimed that she had been to the office of the Returning Officer for the second time on 23-4-2008 for representing her nomination paper ; that she had not taken any oath before the returning officer ; that she had never presented exhibits marked as Ex.P3 in this petition before the returning officer along with her nomination paper ; that Ex.P3 is a fabricated document ; that the crossings made on page Nos. 53 and 55 of the Annexures to the election petition is only to mislead this court ; that the so called attachment of two papers to the nomination papers to include the names of two additional proposers was neither wanted in law nor in accordance with law and it was only a gimmick as it contained the names of fictitious persons etc.,

58. Even with regard to Exhibit P6, it is suggested that is is not relating to the original of the Xerox copy as attested by the witness ; that Exhibit.P7 does not relate to any receipt pertaining to any complaint sent to the Election commission or document Annexed to the election petition ; that Ex.P8-intimation from the postal department regarding delivery of article does not relate to any complaint by the petitioner to the election commission ; that she had not deposited the amount required to be deposited in terms of

section 34 of the Act while presenting the nomination paper before the returning officer ; that Ex.P20-letter is not necessarily linked to obtaining Exhibits. P21 to P24- CDs from the office of the District Election Officer, Mahadevapura Zone ; that she had manipulated the writings on Ex.P20 acknowledgement ; that the original of Ex.P20-letter is dated 30-6-2010 from the office of the Joint Commissioner, BBMP, Mahadevapura Zone, addressed to the Assistant Revenue Officer, 151, K.R. Pura Legislative Assembly Constituency is not to be found in any of these documents; that Exhibits. P21 to P24-CDs had been abtained from unauthorized persons ; that the Election Commission of India had not either authorized or appointed any person to videograph the electioneering events ; that the Election Commission of India had not instructed for issued of any copies of videograph of any electioneering event now in the form of CDs which line of cross examination the witness has generally denied the suggestion and stood her ground.

59. However, this witness has accepted some of the suggestions put to her during cross examination such as not making nay attempt to obtain a complete electoral roll of K.R. Pura Legislative Assembly Constituency from the office of any recognized political party ; that she had not made any complaint to the Election Commission either on the last day for acceptance of nomination paper i.e., on 23-4-2008 or the next two days ; that the Returning Officer had not assigned any serial number to the nomination paper that she presented before him on 23-4-2008 ; that it was later that corrections had been made in the descriptions against Sl. Nos. 5,6 and 7 of Part-II of the nomination paper meant for providing particulars of the proposers; that while corrections are not Authenticated by anyone. It had been carried out by her husband after comparing the part number of electoral roll with reference to new part number and serial numbers of the electoral roll displayed on the Notice Board of the CMC, K.R. Pura Assembly Constituency ; that the returning officer did not receive her nomination paper pointing out that it did not contain the serial numbers of ten proposers as reflected in the electoral roll of the constituency and had asked her to represent the nomination paper with the correct serial number and part number of the proposers as indicated in the electoral roll of the constituency and it can be obtained at the Office of the CMC revenue office. K.R. Pura Assembly Constituency located in the ground floor of the building ; that she had by way of abundant caution included the name of two more proposers by attaching additional paper to the nomination paper ; that she had not deposited the amount required to be deposited under section 34 of the Act while presenting her nomination paper before the returning officer ; that she had obtained Ex.P21 to P24-CDs by filing an application on 18-5-2010 under the provisions of the Right to Information Act, 2005 ; that on viewing Exhibits. P21 to P24-CDs. It was not possible to ascertain as to whether it is a videograph at the instance of the Election Commission of India or it it is videgraphed by any identified person ; that even the surface of Exhibits. P21 to P24-CDs wherein some inscriptions are found. Does not indicate as to who had videographed the same ; that Ex.P21 to P24 also do not contain any digital certification or digital signature for its authenticity ; that she had not viewed the original videographing of the electioneering event ; that she had also not seen the videographing of the event as depicted in Exhibits. P21 to P24-CDs etc.

60. PW.2 is the husband of the petitioner-PW.1 and has deposed supporting the version of the petitioner ; that he was the person when the petitioner had gone to meet her supporters and had seen her supporters affixing their signatures as proposers proposing the candidature of the petitioner from K.R. Pura Legislative Assembly Constituency, as found in Ex.P1-nomination paper ; that such proposers had after subscribing their signature to the nomination paper had handed over their self-attested EXPICs; that Ex.P2 was affidavit sworn to by the petitioner before the Notary public Smt. Bhagyakumari ; that Ex.P3 was appended to the nomination paper filed by the petitioner ; that Ex. P4 is the extract of electoral roll of the constituency C.V. Raman Nagar, obtained by the petitioner ; that ExP5 was the affidavit sworn to by the petitioner before notary public Smt Bhagyakumari on 23-4-2008 for the purpose of changing her name from kavita Mageswaran' to Kavitha Mahesh'; that he had accompanied his wife-petitioner to the office of the returning officer, K.R. Pura Assembly Constituency, and reached there at 14.00 hours ; that he saw the petitioner presenting her nomination paper along with Annexures before the returning officer, K.R. Pura Legislative Assembly Constituency and saw her making a request for providing her copy of the electoral roll of the K.R. Pura Legislative Assembly Constituency for noting down the new part number and serial number of the proposers who had nominated her to contest as candidate from the K.R. Pura Legislative Assembly Constituency ; that the returning officer resonded by asking his wife to approach the revenue office located in the ground floor for getting the particulars ; that the Petitioner had requested him to obtain the information from the revenue office located in the ground floor ; that he made efforts to obtain the same. But could not as staff had gone out for lunch ; that it was kept under the lock and key of the revenue officer of K.R. Pura who also had gone out for lunch ; that his efforts for securing information was not fruitful even after forty five minutes ; that when he returned to the office of the returning officer and told

his wife about the developments at the ground floor and the petitioner realizing that these particulars cannot be completed and the time was running out for presentation and with hope that it can be supplemented before expiry of scrutiny on the next day. Presented the nomination papers without such particulars requesting the retuning officer to accept the same. But the returning officer declined to accept the nomination paper without new part number and serial number of the proposers and if he was compelled to accept the same without said particulars. He would reject the nomination paper the next day.

61. This witness has also deposed that the petitioner gave a written representation to the returning officer requesting him to accept her nomination paper with the assurance that she would make good the deficiency by mentioning the new part and serial number of the proposers the next day i.e. on the scrutiny day.

62. The witness had stated at that time the petitioner also gave a self-attested Xerox copies of proposers EPICs along with the written representation and requesting the extension of time to complete such particulars the next day. But the returning officer refused to accept the nomination paper and the written representation and Xerox copies of self attested EPICs of the proposers commenting that the petitioner cannot blame others for her own negligent Act.

63. This witness has stated that this conduct of the returning officer very mush disappointed that petitioner and she left officer of the returning officer in an upset mood and seeing all such developments thought this witness also protested. The returning officer retorted rudely by saying that go an do whatever you can do'.

64. This witness has also deposed that he had seen the petitioner writing her written representation which is sought to be given to the returning officer at the office of the assistant commissioner of Police (ACP), who was also incharge of 151 K.R. Pura Assembly Constituency and while sitting opposite to the ACP and using his table for support.

65. While this witness has supported the version of the petitioner regarding Ex. P14, P15, P16, P17, P18, P19, he has also deposed the have viewed the contents of Ex. P21 to P24 when the petitioner had played these CDs at their residence by using the personal laptop. He has stated that he had noticed the presence of the petitioner before the returning officer and presenting her nomination paper.

66. He has admitted in his cross examination that being husband of the petitioner, quite naturally he is interested in the success of the election petitioner everywhere ; that he was present in the court hall while the petitioner was deposing and while she was being cross-examined, till it was objected to by learned counsel for the respondent and he was sent out on 18-2-2011. He has also stated that while he works as a field development officer in the marketing division of the Life Insurance Corporation of India ; that he does sign the attendance register whenever he attends the office ; that his office hours are not rigid or specific ; that on days he had attended the court proceedings, he had applied for casual leave.

67. The line of cross examination of this witness also suggests that he has deposed everything falsely to support the petitioner and aparticularly to suggest that the petitioner had never requested the returning officer to accept her nomination paper without the serial number and new part number of the proposers with the assurance that it can be filled up at the time of scrutiny. The witness has denied such suggestions during cross examination and on his part has stated that the petitioner did make a request in writing for such acceptance of her nomination paper etc. He has denied suggestion that he has tampered with Exhibits. P21 to P24 and has also denied the suggestion that CDs do not reveal the petitioner presenting her nomination paper to the returning officer.

68. PW.3-the returning officer is the other witness and thought this witeness is cited as witness for the petitioner. Being the very returning officer and an official entrusted with the responsibilities of conducting elections, this witness can be treated more as a court witness than a witness on behalf of the petitioner.

69. This witness has stated that while he is in the services of the State Government, at the time of conducting of elctions, he was on deputation to the Central Election Commission and had been appointed by the Election Commission of India as the returning officer to oversee the conduct of elctions to 151, K.R. Pura Legislative Assembly Constituency. He stated that he was conscious of being governed by service conditions as applicable to officers who are on deputation to Election Commission of India and who are drafted for election itself. He has also stated that as the returning officer, he had been provided with 'Handbook for

Returning Officers' and a compilation of circulars issued by Election Commission of India for the guidance of the Returning Officer known as 'Compendium of Instructions' comprising volumes 1 to 4 and he has followed the instructions and acted accordingly.

70. He has stated that he had maintained a register for issue of nomination papers to the candidates and had issued nomination papers to candidates or their representatives free of cost, but was obtaining the signature of the person on receiving the nomination form with acknowledgement for having received the nomination form. He has stated that he can identify the election petitioner as intending candidate in 151, K.R. Pura Assembly Constituency and has stated that he does not remember correctly if the elction petitioner had met him on three occuasions on 23-4-2008 which was the last day for presentation of nomination papers. However, this witness has stated that he remembers to have seen the election petitioner on two occuasions on that day and has further stated that though he cannot remember the exact time at which the election petitioner met for the first time.but also says it could be between 3 pm and 3.15 pm on that day.

71. The witness has stated that as per his recollection. Election petitioner could have met him between 5.30 pm and 6 pm; that he was very busy on 23-4-2008 being the last day for filing nomination papers; that he was very involved in receiving nomination papers, scrutinizing them and for follow up action etc.; that on that day, he had received eighteen nomination papers from eight different persons; that Exhibit.P1 produced before the court had not been presented before him between 11 AM and 3 PM on 23-4-2008.

72. The returing officer has stated that he did not refuse to accept Ex.P1 for the reason that it was not accompanied by other necessary documents, but it was never presented before him by the candidate. However, he has stated that the election petitioner had approached him on that day between 5.30 PM and 6 PM and had attempted to present the nomination paper along with a written representation requesting him to accept the nomination paper as the election petitioner would furnish the relevant documents by or before the scrutiny period to give her time for gathering particulars such as part number. Serial number of the voters/proposers for the current year in the constituency and that can be supplemented before the scrutiny period as it is permitted.

73. The returning officer has stated that he refused to accept the same ; that there is no enabling provision to do so; that the requirements of law and procedure are quite familiar to him as contained in paras 12(1) and 12(2) of chapter-V of Handbook for Returning Officers supplied by the Election Commission of India wherein it had been clearly indicted that time for presenting a nomination paper was between 11 AM and 3 AM.

74. He had stated that the returning officer does not have any power to vary this time stipulation for receiving the nomination papers beyond the permitted hours nor a candidate has any right to insist that it can be varied or extended to accept the nomination paper later.

75. He has volunteered to state that the election petitioner made a request to accept the paper and had come to be rejected the next day. He has indicated that as per rules and guidelines, a candidate is permitted to be accompanied by five other persons at the time of filing of nomination papers, but there is no impediment for more than one candidate to be present simultaneously before the returning officer while candidates are presenting their nomination papers, though normally candidates come one after another and that he does not remember if more than one candidate was present in his office for filing the nomination paper on 23-4-2008.

76. He has stated that nomination papers could have been filed between 17-4-2008 to 23-4-2008 as per the calendar of events published for the elections ; that at the end of the closing ; hours for each day of filing the nomination. It is after 3 PM of each when he was preparing a list of candidates whose nomination papers had been received on that day and it was being notified on the notice board in Form No. 7 prescribed as per Rule 10(1) of the Conduct of Election Rules, 1961, for the information of the general public.

77. He has stated that the respondent had been declared as the elected candidate from 151, K.R. Pura Assembly Constituency and the Election petitioner had not presented her nomination papers on 23-4-2008 within the stipulated hours. It is also stated that when the election petitioner had come to his office with the intention of presenting her nomination papers, he was busy receiving and looking into nomination papers of another candidate by name Ambujakshi and therefore election petitioner was waiting for her turn and Ambujakshi who was sitting beside her, stood up to take oath.

78. During cross examination, PW3 returning officer has stated that the entire building wherein it is located BBMP office at K.R. Pura had been notified as the office of the returning officer of K.R. Pura Legislative Assembly Constituency ; that his office was located in the first floor of the building ; that names of the candidates who have filed their nomination paper by 3 pm of each day between 17-4-2008 and 23-4-2008 were being notified on the notice board located on the ground floor of he said building. He has also stated that he had published a consolidated list of all candidates who had filed their nomination papers up to 23-4-2008 immediately after 3 PM on that day. The returning officer also denied a suggestion that he had only a chamber in the building, but states that an office it is an office and not merely a chamber and even outside his office, there was space enough for the candidates and others who wanted to visit his office to wait. He has accepted the suggestion that the office of assistant returning officer was working in the ground floor of the building. He has stated that there was no siting arrangement made either for the candidates or others intending to visit his office and no such arrangement was available, whether in the ground floor or in the first floor. The returning officer has stated that tow observes were deputed by the election commission of India for overseeing the conduct of elctions and the name of such observer was M/s Meeta Rajeevalochan, employed in the customs department at Mumbai as general observer, and another male person, whose name he could not remember had been deputed as expenditure observer. He stated that he was in his office on 23-4-2008 by 9-30 AM and had been receiving nomination papers from 11.00 AM onwards and had noticed that the general observer who was present in his office on that day leaving his office immediately after 3-00 PM though he has not observed as to when she had entered the office. He further stated that the commissioner BBMP had published the details such as names, residential addresses, phone numbers, fax numbers, e-mail ids etc., of all the observers appointed by the election commission of India for all eight assembly constituencies within the limits of BBMP for the information of general public. But he stated that he could not remember whether it had been so notified on the notice board without referring to the official record.

79. Cross-exmination of this witness had been stopped, as this witness was answering to every question that he does not remember the precise date without reference to official records and therefore he was directed to appear for further cross-exmination with records.

80. This witness was examined by the court also as witness was showing marked reluctance to answer questions posed by the petitioner as well as the counsel for the respondent and was adopting an evasive attitude. A separate order was passed noticing such conduct on the part of this witness (returning officer of K.R. Pura Legislative Assembly Constitueney) as per order dated 15-6-2011 reading as under :

**ORDER PASSED IN THE MORNING SESSION :**

> The witness is not very sure of what development took place and the manner of his deposition is inconsistent every second and minute, keeps varying and to support his version that he had conducted in accordance with rules and regulations and in a proper manner states that a certain development had taken place around some time, but goes back on the earlier version that the last nomination paper was received at 2.58 pm but later mentioned it was after 3 PM and on being cautioned by the court, goes back to the earlier version of 2.58 PM etc.
>
> This witness is obviously lying on oath, his deposition is inconsistent, varying by the second, different version each time. A person giving different version of the same incident is not merely uttering falsehood once or the other time, but also committing perjury.
>
> This witness lacks credibility for deposing before the court on oath and requires to be dealt with in accordance with law and being a public servant who has taken oath to depose truth and only truth before this court has been attempting to depose incorrect and false statements which per se is not only perjury within the meaning of section 191 of Indian Penal Code, but also committing contempt of court.

Therefore, no need or occasion for recording firther evidence of this witness and if need be can be summoned later by the court for questioning. As of now the witness is discharged.

Witness is directed to remain present in the court hall. Call this matter again at 2.30 pm.

**ORDER PASSED IN THE AFTERNOON SESSION :**

Further cross-examination of the witness is stopped at this stage to enable the witness to procure relevant necessary, official records throwing light on the developments that had taken place during his furnctioning as the returning officer in the K.R. Pura Assembly Consttuency.

As the witness states that the records pertaining to conduct of elections etc., are all now available at the office of the district election officer, Mahadevapura Zone, BBMP, Bangalore. Who is ex officio holding this post, is otherwise functioning as joint commissioner, BBMP at Mahadevepura and as this officer has to part with records. The witness to be enabled to secure these records and attend court for further cross examination with the records.

Sri Shashikanth, learned counsel for the respondent submits that for such purpose, it is necessary for the election petitioner to make an application listing the documents and records that are required to be summoned and summons may be issued on such applications to the officer who is having the custody of such records.

It is said that procedure is the hand maid of justice and procedure should be given only such importance as is warranted to ensure fairplay, equal opportunity and practical possibilities of adhering to the procedure.

An election petition though is a creature of the Representation of People Act, 1951, and being a petition at the instance of an aggrieved persons with regard to the validity of the declaration of election result, and for questioning a correctness or otherwise of the declaration of results and may have the characteristics of an adversary litigation, it nevertheless has aflavour of public interest imbedded into it, as the conduct of free and fair election is the ‘sine qua non’ of any healthy democratic process. Records relating to the conduct of elections in a general election. Either to an assembly or to the parliament, are not private documents but are public documents or records and if any such record can throw light on the manner of conduct of elections in any particular assembly segment, while it is a relevant record, familiarity or ignorance of such a record on the part of the election petitioner cannot come in the way of court scrutinizing the record for being satisfied or even for being apprised about the manner of conduct of election.

It is therefore, hereby ordered and the witness who has appeared before the Court as PW 3 today and who had functioned as the returning officer of the K.R. Pura Assembly Constituency is hereby directed to contact the district election officer with this order, secure the relevant records to enable him to depose before this court correctly with precision, unambiguity and then appear with such records before this court on 28-6-2011, as the witness states that he requires at least seven days time to complete this exercise.

The district election officer, who is also the joint commissioner, BBMP, Mahadevapura, is hereby directed to ensure compliance with this order and to hand over such records which are in his custody relating to the conduct of K.R. Pura Assembly elections to enable

the witness to depose further before this court in a proper and precise manner as the then returning officer of the constituency, by identifying the record.

The Registrar General of this court is directed to ensure a copy of this order is served on the district election officer, Mahadevapura zone, BBMP, Mahadevapura, Bangalore-48.

The Witness also be furnished with a copy of this order.

List the petition for further cross-examination of PW3 on 28-6-2011.

81. During further cross-examination on and after 28-6-2011 and before the counsel for respondent cross-examining this witness, during the questioning of the returning officer by the court, he has stated that he had got records relating to publication of election on notice board and appointment of the returning officer, ARO, AERO, notice of publication of list of polling stations, nomination receipt register, scrutiny, withdrawal of candidates, allotment of symbols, preparation of EVMs, preparation for poll, counting of votes and issue of notices to police department, declaration of result, return and forfeiture of deposits, election accounts, sealed cover containing the CDs procured from the officers of the joint commissioner, bruhat Bangalore mahanagara palike and district election officer, Mahadevapura zone, Bangalore. He has also stated that he had procured the records from the office of the additional commissioner, district election office, Bangalore central relating to observers deputation by the election commission of India for overseeing the conduct of the elections. He stated that these documents throw light on the manner of conduct of election and the election process. He has stated that he was aware about the general M/s Meeta Rajeevalochan staying at HAL Guest House. HAL Officers Enclave, Care of HABC Guest House, Old Madras Road, C.V. Raman Nagar, Bangalore, as he had visited the said observer on three occasions at the Guest House. He further stated that another observer by name Mr. Pankaj Kumar, who had been deputed as expenditure observer by the election commission of India, was staying at the ISRO Guest House, Airport Road, Bangalore, as per the information gathered from the records. He stated that he had gone to meet the general observer to furnish her information relating to the list of contesting candidates as published in Form 7A in the office of the returning officer, BBMP Office, K.R. Pura, as the general observer had requested him to furnish this information and it was so furnished to the general observer.

82. However, this witness again stated that he met the general observer only on two occasions and not on three occasions as stated earlier ; that he had met the general observer at about 7.00 PM on 26-4-2008 for the first time to hand over a copy of form No. 7 publication. He has stated that the calendar of events as published inthe gazette notification dated 16-4-2008 was also notified on the notice board around 10.00 AM and the process of receiving nomination papers commenced with this publication. He has stated that no nomination papers received on 16-4-2008. he stated that with the observers were present on the scrutiny day i.e. on 24-4-2008 and also on the day of mustering when election equipments were being distributed to persons incharge of the polling booths which was on 9-5-2008 and also on the day of polls which was on 10-5-2008 and thereafter on the demustering day during the evening hours on that day on which days the general observer was present as per his memory.

83. During the further cross-examination of this witness by the learned counsel for the respondent, he has stated that as and when he used to receive nomination papers ; he used to mention the time and date of presentation. He has stated that he had so mentioned details of each of the nomination papers received by him . He has also stated that between 16-4-2008 and 23-4-2008, he had received 30 nomination papers at his office filed on behalf of 18 candidates. He stated that he used to record in a register maintained by him the particulars of the names of the candidates, party to which the candidates belong to date and time of the presentation of nomination papers etc. Witness stated that though there was no prescribed format in which such a register was required to be maintained, he used to do so for his own reference.

84. This witness has produced a cover (without any seal or signature) on which is written in Kannada that it contains the register wherein the returning officer has entered the details of candidates who had presented nomination papers for contesting assembly election from K.R. Pura Legislature Assembly Constituency. A letter dated 27-6-2011 from Sri K.M. Devaraj, Additional District Election Officer (North) & Joint Commissioner, Bruhat Bangalore Mahanagara Palike, Mahadevapure Zone, Bangalore, addressed to the returning officer, K.R. Pura Assembly Constituency. Who was functioning as CAVO, Mysore Minerals Ltd., M.G. Road, Bangalore-1, forwarding the available documents in his office as indicated in Annexure-A to the letter and the documents which had been destroyed as per Annexure-B to the letter, was marked as ExC1. The register is said to have been maintained for

reference, wherein is entered the particulars of the candidates who had filed nomination paper in the said constituency is marked as ExC2. The cover in which ExC2 register is marked as ExC3 and the cover wherein was contained file relating to nomination paper dated 17-4-2008 filed by one Smt. Gowramma as candidate for Communist Party of India (Marxist) is marked as ExC4 and the inside file is marked as ExC5. Yet another nomination paper filed on behalf of Smt. Gowramma on 21-4-2008 is marked as ExC6.

85. Request of Sri Shashikantha C. Learned counsel for the respondent, for marking nomination papers of other candidates was declined, as it was neither relevant nor useful for the purpose of the present election petition, particularly as the very register ExC2 was stated to be not part of any official records to be maintained in terms of any requirement of law.

86. The returning officer has stated that on 23-4-2008 at 23-4-2008 at 2.58 PM he received nomination papers of one M/s Ambujakshi and while processing the nomination papers of one M/s Ambujakshi, and while processing the nomination paper of M/s Ambujakshi, petitioner entered his office ; that he took seven to eight minutes to process the nomination paper of Ms Ambujakshi ; that a candidate takes oath in the prescribed format immediately after receipt of the nomination paper is over. The returning officer has stated that when the petitioner entered his office, where he was sitting along with him were present Mr. Srinivas, Assistant Returning Officer, Mr. Ramesh, Tax Inspector, Ms Jyothi Vinoda, FDA and Ms Meeta Rajeevalochan, Observer. He has also stated that petitioner came to his office, sat and left. It is further stated that the petitioner met him again outside his office when he had finshed the business for the day and was walking out of his office around 5.30 PM and requested him to accept her nomination paper, which he refused. He also stated that even at that time. Mr. Srinivas, ARO, Mr. Ramesh, Tax Inspector and Ms Jyothi Vinoda, FDA at the BBMP office whose services he had requested to assist him in the work as Returning Officer, were present. He stated that the petitioner did not request him to accept her nomination paper during her first visit.

87. This court had directed PW.3-Returning Officer who was found to be deposing in an erratic manner before the court by making contradictory statements every other moment which fact had also been noticed by this court in the order dated 15-6-2011, to secure the official records with reference to which the Returning officer can refresh his memory and answer the questions during his deposition and had for such purpose directed issue of summons to the District Election Officer, Mahadevapura Zone, BBMP, Bangalore, to make available the original records to the witness for production before the court. During this process, Ex.C2 said to be a private unofficial register maintained by the Returning Officer containing details of persons who had submitted the nomination paper had been marked. The original nomination paper of one Smt. Gowramma and the file relating to the nomination papers had been marked as Ex.C5. Likewise, another set of nomination papers on behalf of the same lady whose name figured at Sl. No. 8 in the list maintained by the Returning Officer had been marked as Ex. C6.

88. The election petitioner had also made an application for production of documentary evidence relating to the attempts made by the election petitioner to secure the video recording of the election process by the production of compact discs wherein the video recording had taken place in fourteen compact discs and amongst them, compact discs MPEGAV-2, MPEGAV-5, MPEGAV-6, MPEGAV-14 were marked as Exs.P21, P22,P23 & P24 respectively. Though it was an attempt on the part of the election petitioner that the compact discs produced before the court being in the nature of certified copies of the original video recording and issued by the authority who had the custody of the original video recording and the purpose was to demonstrate that the election petitioner had not only visited the office of the Returning Officer but also had requested the Returning Officer to accept her nomination paper etc., the authenticity of these compact discs being not very definite and lack of clarity has also dissuaded this court from placing much reliance on these exhibits, but with the Returning Officer having indicated that the election petitioner was before him with her nomination papers on the last date for presentation of nomination papers, that evidence is discussed and outcome relating to production of Ex.P21 to P24 is not gone into in any further detail.

89. Petitioner in person and Sri. Nanjunda Reddy, learned senior counsel appearing for the respondent as well as Sri. Shashikantha, learned counsel on record for the respondent have been heard very extensively.

90. Smt. Kavitha Mahesh, petitioner party in person reads the written arguments placed before the court and draws attention to the prayers in the election petition and submits that the second prayer survives even earlier respondents 1 & 4 are no more parties to the petition after the deletion of their names from the array of respondents and the second prayer also survives for examination independently even when the first prayer is rejected.

91. The petitioner submits that the Returning Officer could have received her defective or incomplete nomination papers when presented by the petitioner as it was the last day for filing nominations and later on the scrutiny day reject the nomination papers if at all on the scrutiny day. If the defects had not yet been removed or rectified by then and by not accepting the nomination papers on the last day for filing nomination papers, the Returning Officer has virtually deprived the petitioner opportunity to contest the election and has effectively avoided scrutiny of the nomination papers and has thereby violated section 30(b) of the Act and also sections 33(4) and 35 of the Act.

92. Petitioner draws attention to paragraph 16.1 of the Handbook for Returning Officers - preliminary examination of nomination papers and also refers to sections 36(4) & 36(5) of the Act and in this regard relies on the Judgement of the Supreme Court in the case of '**RANGILAL CHOUDHURY vs. DAHU SAO AND OTHERS' (AIR 1962 SC 1248)** as also the Judgement of the Supreme Court in Civil Appeal Nos. 5142/2011 & 5143/2011 and submits that the Judgement can be read as part of the submissions of the petitioner on the main petition and also the observations contained in paragraphs 80 to 91 and draws attention of the court to the written arguments relating to issue No. 1 and draws attention to paragraph-3 of the deposition of the petitioner and submits this evidence supports the case of the petitioner to support the petitioner's case on issue No. 1 and therefore the requirement of proviso to section 33(1) of the Act is made good by the petitioner through Ex.P1 ; that the oral evidence along with Ex.P1 proves that the candidature of the petitioner had been duly supported by ten electors in the Constituency and therefore Non - acceptance of the nomination paper amounts to rejection of the election petition.

93. The petitioner draws attention of the court to paragraph 6.2 at page 54 of the Handbook for Returning Officers and submits that the Returning Officer has failed to produce the register containing the names of the persons in whose favour nomination papers have been issued which would have shown that the Returning Officer had issued nomination papers to the petitioner also on 19-4-2008, notwithstanding the order passed by this court on 15-6-2011 ; that the petitioner had applied to the District Election Officer who is supposed to have the original records relating to the conduct of elections as per para 6.2 at page 54 of the Handbook, under the provisions of the Right to Information Act for issue of an extract/copy of the register, showing the names of persons in whose favour the Returning Officer had issued nomination papers but has not been given any copy/extract and therefore it refers to section 77(1) of the Act.

94. By drawing attenction to section 79(b) of the Act which refers to a candidate who claims to have been duly nominated and therefore entitled to maintain a petition under section 81 of the Act on the premise of section 100(1)(c) of the Act and relies upon the Judgement of the Supreme Court in the case of **SANGAPPA ANDANAPPA vs SHIVAMURTHISWAMY SIDDAPPALYASWAMY (AIR 1961 MYSORE 106).**

95. In respect of issue No. 2, submission of the petitioner is that the contents of paragraphs 8 & 9 of the petition indicate the petitioner having presented her nomination papers before the Returning officer, K.R. Pura Assembly Constituency at 2 pm on 23-4-2008 and submits that this plea is supported by evidence of PW.1 and also draws attention to the evidence of PW.2 and submits that the pleadings in paragraphs 7 to 10 of the petition are made good by the evidence of PW.1 and PW2 together with Ex.P1 and incidentally mentions Order VIII Rule 5 of CPC to submit that a denial is also to be taken as an admission and on such premise submits that such of pleas in those paragraphs in the petition which are not admitted by the respondent but has only denied should be taken as an admission by the respondent as there was no occasion to deny the plea or averment by the respondent, being not directed towards the respondent, but only against the Returning Officer and therefore at the best the respondent could have responded by saying not admitted as denial is of no significance or consequence and therefore when the respondent has only responded by saying denied in his written statement with respect to the pleadings containing allegations against the Returning Officer, it must be taken as 'admitted' as denial has no significance and on this basis submits that there is an admission on the part of the respondent that he has illegally stayed in the office of the Returning Officer from 1 PM to 4 PM contrary to the instructions issued by the Election Commission of India.

96. Petitioner draws attention of the court to instruction No. 6 at page 23 of the Compendium of Instructions Volume 2 and draws attention to the rejoinder filed by the petitioner as also to paragraph 16 of the written statement and submits that the arguments holds good in respect of the contents of paragraph 1(10) of the Election petition pleadings for want of commensurate plea

in paragraph 16 of the written statement to the effect that the respondent does not admit but containing only a plea of denial and submits that the plea in paragraph 1(11) of the election petition is proved by the evidence of PW.1 & PW.2 and also submits with respect to paragraph 17 of the written statement that the first part this paragraph relating to the denial of the petitioner's version about the obnoxious behaviour on the part of the Returning Officer should be taken to be admitted on the basis of Order VIII Rule 5 of CPC. However, with regard to the later part of the written statement, plea in paragraph-17 submits that the petitioner has proved her visit to the office of the Returning Officer on the last day for filing nomination papers through the evidence of PW.1 &PW.2 etc., that with respect to paragraph 18 of the written statement, submits that the contents of paragraph-18 of the written statement being only to deny the averments as contained in paragraph 1(12) of the petitioner and not being a specific not admitted plea should be taken to have been admitted ; that the later part of the plea in paragraph-18 of the written statement is already covered by the order passed on this aspect and submits that the petition in plea in paragraph 1(12) of the election petition contents of the later part of this paragraph is presumptive and beyond the scope of a reasonable dignified defence but bordering on scurrilous etc.

97. The petitioner submits that regarding paragraph-19 of the written statement relating to paragraph 1(13) of the election petition does not contain a specific plea does not admit or not admitted and therefore deemed to be admitted as per Order VIII Rule 5 of CPC and same argument applies to paragraph 1(14) of the petition pleadings vis-a-vis paragraph 20 of the written statement ; that the violations committed by the Returning Officer are demonstrated with respect to the provisions of the Handbook of Guidelines and submits that in the contents of paragraph 20 of the written statement, there is an implied admission to the effect that the election petitioner has filed her nomination papers; that the argument of Order VIII Rule 5 of CPC amounting to an implied admission due to the absence of a specific plea of not admitted or does not admit is pressed into service in respect of petition pleadings in paragraph 1(15) vis-a-vis paragraph 21 of the written statement and so also in respect of paragraphs 1(16) & 1(17) of the election petition.

98. With regard to paragraph 24 of the written statement, the petitioner submits that there is a plea of does not admit and therefore order VIII Rule 5 of CPC may not apply ; that proper and sufficient court fee has been paid and also with respect to the security deposit for the election petitioner submits the amount of Rs, 2,000/- is paid etc.,

99. As per as grounds raised in paragraphs II (a) to (g) are concerned, contention of the petitioner is that except the grounds II(d) all other paragraphs vis-a-vis paragraphs 26,27,28,30,31 & 32 and in respect of these aspects order VIII rules 5 CPC operates.

100. Regarding prayer column in the writ petition, petitioners submits that election tribunal has the power to issues commensurate directions to the chief election commissioner or the returning officer and such a power is to be found in Section 100 r/w Section 134 of the Act. In support of this contention petitioner has relied on the decision of the Supreme Court in the case of **HARI SHANKER JAIN** (supra).

101. In Respect of prayer (b) based on the ratio/law declared by the Supreme Court in paragraphs 8 & 9 of the of **HARI SHANKER JAIN** (supra), submission of petitioner is that the High Court does not have the power to issue directions to the chief election commissioner to prosecute and take other necessary action against the returning officer by issue of directions.

102. In so far as prayer (c) is concerned, submission of the petitioner is that this prayer is traversed by the respondent with respect to contents in paragraph 36 ; that the question is already decided by this court in terms of order dated 12-11-2009 passed in Misc. W. 15572/2009 ; that regarding paragraph 37 of the written statement it is submitted the affidavit of the petitioner is in accordance with law and procedure.

103. With respect to paragraph 38 of the written statement it is submitted that the averments in this paragraph are inconsistent with the respondent's version as contained in paragraph 8 of the written statement wherein it is stated that the petitioner had not at all abtained her nomination papers, but obtaining of nomination papers is admitted in this paragraph.

104. Regarding issue No. 3 the petitioner draws attention to paragraph 5 of the evidence of the Returning Officer and submits that the Returning Officer has admitted that the petitioner had appeared before him on the last date for filing nomination papers on two occasions and if so it ought to be only before 3.00 pm of the day as the Returning officer will be closing the doors to his office by 3.00 pm as per the guidelines issued by the Election Commissioner ; that the contents of the paragraph 9 of the

deposition of the respondent is clearly falsehood in trying to tell before this court that the petitioner had approached him approximately between 5.30 pm and 6.00 pm is utter lie as no one is allowed into the office of the Returning Officer at this hours.

105. Petitioner draws attention to page 179 of the Compendium of Instructions to the Returning Officers by Election Commission and therefore submits that it was very necessary for the Returning Officer to have maintained videographic recording of important events ; that the Returning Officer has deliberately violated these guidelines and in support of this submission places reliance upon the judgement of the Supreme Court in the case of **JANAK SINGH vs. RAM DAS RAI AND OTHERS (2005(2)SCC 1).**

106. Petitioner submits that the Returning Officer has not only violated the instructions in the hand book but also has lied while in the witness box by deposing that the petitioner had met for the second time on 23-4-2008 between 5-30 pm and 6-00 pm.

107. Petitioner draws attention to paragraph 9 of deposition of the Returning Officer and submits that contents of this paragraph amounts to an admission that the Returning Officer refuse to receive the nomination papers of the petitioner.

108. Petitioner also draws attention to paragraph 40 of the deposition of the Returning Officer during cross examination that there is admission by the returning Officer that the petitioner was present before him with her nomination papers before 3.00 PM on that day when she was waiting for her turn to present her nomination papers as the Returning Officer was busy scrutinizing the nomination papers of another candidate by name Smt. Ambujakshi.

109. Further, the petitioner refers to Section 24 of the Act with regard to general duty of Returning Office and submits that the Returning Officer has not acted or conducted in consonance with the requirements of this section and also draws attention to Section 28A of the Act and submits that the Returning Officer while functioning as such is deemed to be on deputation to the Election Commission for the period commencing on and from the date of the Notification calling for such election and ending with the date of declaration of results of such election and accordingly such officers shall during the period be subject to the control. Superintendence and discipline of the Election Commission of India ; that the petitioner had filed writ petition before this court during the period between the date of issue of calendar of events and the date of declaration of result, but the writ petition was rejected as not maintainable as per order dated 28-5-2008. reserving liberity to the petitioner to present an election petition but the prayer for taking eaction against the errant Returning Officer had not been rejected on merits and thereafter the present Election Petition having been presented, it should be taken that not only the Election Commission is the disciplinary Authority for taking action against a misconducting Returning Officer on 28-4-2008 but also the High Court has the power, authority and jurisdiction to issue directions to the Election Commission for such purpose that the Returning Officer has violated the statutory provisions under Section 33(4), 36(4) and 36(5) of the Act and draws attention to chapter V of the hand book of the Returning Officer-paragraph 12.2, 16.1, 17.1 and 17.2.

110. Petitioner submits that the Returning Officer by his earlier improper conduct or misconduct has not allowed the nomination papers to reach the stage of scrutiny ; that the Returning Officer has also committed violation of instruction No. 6 of compendium of instructions regarding videographing of the Election event is not meticulously followed by the Returning Officer and draws attention to instruction at serial No. 52 and 53 highlighting the significance of compact discs and videographing and therefore submits the petitioner has made good issue No. 2 by the pleadings and evidence in this petition.

111. On issue No. 3, petitioner points out to the plea in paragraphs 8, 9 and 10 of the petition and also deposition of PWs. 1, 2 and 3 and submits that the deposition of PW3 is a clear admission by the Retunring Officer of the factum of the petitioner presenting her nomination papers ; that the time of presentation by the petitioner to be between 5.30 pm and 6.00 pm is blatant lie as the office of the Retutning Officer closes by 3.00 PM and no one is allowed inside his office after 3.00 PM, more so far presentation of nomination papers.

112. Petitioner also relies on the pleadings of the Respondent in paragraph 15 of the written statement which is vis-a-vis paragraph 1.9 of the petition and paragraph 1.10 of the petition traversed by the respondent at paragraphs 15 and 16 of the written statement, the plea in these paragraphs amounts to an admission of the contents of paragraphs 1.9 and 1.10 of the Election Petition on the principle of law enunciated in Order VII Rule 5 of CPC and so also paragraph 17 of the written statement vis-a-vis paragraph

1(11) of the petition, denial is only partial and therefore there is admission by the Respondent in respect of the part of the plea in paragraph 1.11 of the Election Petition to the extent not specifically admitted plea being absent on the same principle of Order VIII Rule 5 of CPC ; that the video tapes also support the case of the petition ; that the petitioner not only had made all efforts to present her nomination papers but also that the Returning Officer illegally refused to accept the nomination papers of the Election Petitioner and even went beyond in insulting the petitioner and the respondent on his own admission was all along present in the officer of the Returning Officer illegally, thought he had already presented his nomination papers and therefore his only intention of staying back in the office of the Returning Officer was to intimidate or browbeat other candidaters and the very fact that the Returning Officer had permitted the illegal presence of the respondent at his office proves that there was collusion between the respondent and the Returning Officer and the respondent and the Returning Officer had conspired together to ensure that the nomination papers of the petitioner was not even received and the petitioner therefore submits that she has very cogently proved issues 1, 2 & 3 in this manner.

113. With regard to issue No. 4 petitioner submits that the manner of conduct of the Returning Officer as demonstrated above clearly leads one to the inevitable inference.

114. Petitioner draws attention to Section 136(2)(a) of the act submit that a Returning Officer guilty of an electoral offence under this Section shall be punishable with imprisonment for a term which may extend to two years or with fine or both for committing the offence and submits that issue No. 4 is proved.

115. Regarding issue No. 5 petitioner draws attention to exhibit P7 postal receipt of complaint lodged with Chief Election Commissioner, New Delhi as also deposition of PW1 at paragraph 20 and submits this issue No. 5 is proved.

116. It is also the submission of the petitioner that showing wrong serial number of the voter in the voters list is minor error within the scope of Section 36(4) of the Act and Returning Officer should have permitted correction but instant rejecting the nomination paper on this ground is fatal to the result of the Election.

117. Petitioner submits that exhibit P21 to P24 marked on behalf of the petitioner may be admitted as originals under Section 62, secondary evidence under Section 63 and public documents under Section 74 read with Sections 77.78 of the Evidence Act and therefore submits that the petitioner has proved her case and prays for allowing the petition in terms of the prayer.

118. Petitioner has made elaborate submissions with reference to each issue framed for determination in the election petition and drawing my attention to the supporting evidence brought on record Petitioner has also placed reliance on the following authorities.

1. **RANGILAL CHOUDHURY vs. DAHU SAO AND OTHERS (AIR 1962 SC 1248)**
2. **DR. P NALLA THAMPY TERAH vs. UNION OF INDIA AND OTHERS (AIR 1985 SC 1133)**
3. **SANGAPPA ANDANAPPA vs SHIVAMURTHISWAMY SIDDAPPALYASWAMY (AIR 1961 MYSORE 106)**
4. **HARI SHANKER JAIN vs. SONIA GANDHI (2001 (8) SCC 233)**
5. **JANAK SINGH vs. RAM DAS RAI AND OTHERS (2005 (2) SCC 1)**
6. **MS. KRISHNA MOHINI vs. MOHINDER NATH SOFAT (AIR 2000 SC 317)**
7. **RAM BHUAL vs. AMBIKA SINGH (2005 (12) SCC 121)**
8. **UTTAMRAO SHIVDAS JANKAR vs. RANJITSINH VIJAYSINH MOTHITE (AIR 2009 SC 2975)**
9. **NANDIESHA REDDY vs. MRS. KAVITHA MAHESH (2011 STPL (WEB) 587 SC)**

119. Mr. Nanjunda Reddy, learned senior counsel appearing for the respondent has mainly urged that the petitioner being under section 100 (1)(c) of the Act and on the ground of improper rejection, the outcome of the election petition depends mainly on the petitioner having made good issues 1 to 3 and has in this regard urged that the election petition is not even tenable interms of section 81 of the Act as the petitioner is not a candidate within the meaning of section 79(b) of the Act as the petitioner had never been duly nominated as a candidate in the elections to the assembly constituency. Mr. Nanjunda Reddy has drawn my attention to the provisions of section 33(1) and second proviso of this section. Sections 33A(2) and section 34 of the Act and submits that in the first instance, the petitioner had not delivered her nomination papers between 11 am and 3 pm on or before the

last date for receipt of nomination papers. It is urged that the nomination papers as was sought to be presented if at all was sought to be presented, even as can be seen as of now. Ex P1 being claimed as one which was sought to be presented was never a duly filled up or completed nomination papers ; that it had never been supported by ten voters in the constituency as proposers if the petitioner is contesting as an independent candidate ; that the petitioner had never furnished the requisite information on an affidavit in terms of section 33-A(1) and (2) of the Act and had also not made deposit in terms of section 34 of the Act and in such a scenario, by no stretch of imagination, can it be contended that it was a case of rejection of nomination papers and therefore section 100 (1) (c) of the Act is never attracted and the petition only deserves to be dismissed.

120. With reference to the pleadings in the petition as contained in paragraphs- 5,6 and 7 and relating to issue No. 3 and the evidence let in support, submissionof Sri. Nanjunda Reddy, learned senior counsel appearing for the respondent is that the petitioner has not made good this issue ; that nowhere is it shown or demonstrated that the petitioner had requested the Returning Officer to accept her nomination papers during her first visit assuming for argument sake that the first visit was within 3 pm on the last date for receiving nomination papers.

121. Mr. Nanjunda Reddy, learned senior counsel appearing for the the respondent submits that even with reference to the compact discs-ExP23, nothing is made good about the presentation of the nomination papers by the petitioner and therefore the petition only deserves to be dismissed.

122. It is the submission of Mr. Nanjunda Reddy, learned senior counsel appearing for the respondent that even the last nomination papers of other candidate which was accepted on the last date for receiving nomination papers was at 2.58 pm and therefore there could not have arisen for the petitioner to present her nomination papers within 3 pm on that day and this coupled with evidence of the Returning Officer that the petitioner if at all had appeared before him only after 5 or 10 minutes past 3 pm and therefore there was never any presentation of the nomination papers by the petitioner to the Returning Officer.

123. Considerable reliance is placed on the evidence of the Returning Officer to the effect that 'Petition did not request me to accept her nomination papers during her first visit.' It is urged that the testimony of the Returning Officer should be accepted vis-a-vis the petitioner and her husband who has deposed as PW.2. It is submitted that the petitioner did not even cross the preliminary stage of scrutiny under section 33 and having not reached the scrutiny in terms of section 36 of the Act. The question of rejection of nomination papers of the petitioner does not arise and the petition is only to be dismissed.

124. Sri Nanjunda Reddy has also drawn attention to Ex.P2 to submit that an affidavit which was to accompany the nomination papers in terms of section 33-A of the Act was not even in the prescribed format in Form No. 26 and Rule 4(a), but was one in the context of some election to a local body and therefore the requirement of valid presentation was never met by the petitioner ; that non deposit of security deposit amount inevitably will lead to rejection of a nomination paper and as the petitioner had admittedly not deposited the amount. Any acceptance on the last date for presentation of the nomination papers could have only resulted in the rejection the next day and therefore the election petition only deserves to be dismissed ; that there is no averment in the petition to the effect that the Returning Officer was biased or prejudiced against the petitioner and therefore did not accept the nomination papers; that the petition does not contain any everment that the respondent had in any way either influenced or pressurized the Returning Officer not to accept the nomination papers of the petitioner and therefore submissions to the effect that the respondent's presence had influenced the decision of the Retunring Officer cannot be entertained or accepted.

125. In support of submissions. Mr. Nanjunda Reddy, learned senior counsel has relied on the following decisions :

(a) **NARENDER SINGH v. MALLA RAM & ANOTHER'** reported in **AIR 1999 SC 3655.**

(b) **'REGU MAHESH ALIAS REGU MAHESWAR RAO v. RAJENDRA PRATAP BHANJ DEV AND ANOTHER'** reported in 2003 **AIR SCW 5569.**

126. Placing reliance on these Judgements, submission of Sri Nanjunda Reddy, learned senior is that the defective verification of the petition having remained so till date and though this aspect had been gone into while examining the two miscellaneous applications filed by teh respondent for striking out the pleadings and for rejection of the petition as not disclosing the cause of action, defect having not been cured till today, it cannot assume significance and therefore the petition deserves to be dismissed on this ground.

127. Mr. Nanjunda Reddy, learned senior counsel appearing for the respondent has also placed reliance on the following decisions :

(a) '**RAHIM KHAN v. KHURSHID AHMED'** reported in **AIR 1975 SC 290-** Paragraphs 8 to 10.

(b) **'CHARAN SINGH AND OTHERS v GIANI ZAIL SINGH AND ANOTHER'** reported in **(1984) 1 SCC 390-** Paragraph 8

(c) '**CHARAN LAL SAHU AND ANOTHER v K.R. NARAYANAN AND ANOTHER'** reported in **AIR 1998 SC 1506**- Paragraphs 14 to 23.

128. But in my opinion, these decisions do not advance or support the case of the respondent in the present petition as these decisions are not in the context of a petition presented under section 100(1)(c) of the Act where an election petition can be decided even without rejecrence to any conduct or action on the part of the respondent.

129. Mr. Nanjunda Reddy, learned senior counsel has placed reliance on the decision of Punjab & Haryana High Court in the case of **'RABINDER SINGH SOHAIL v. SH. HIRA SINGH GABARIA'** reported in **AIR 1998 P & H 271** to submit that a candidate connot insist for acceptance of a nomination paper beyond 3 pm and refusal to accept nomination papers is fully justified and does not amount to rejection of nomination papers.

130. It is in the wake of such pleadings, evidence and submissions, this election petition is required to be examined and issues answered.

131. The scope for examination of this election petition seeking for relief under section 100(1)(c) of the Act and on the ground that Non acceptance of the nomination paper presented by the petitioner amounts to improper rejection by the Returning Officer.

132. While the pleadings and the evidence in support of the pleadings on the part of the election petitioner is to make home that the Returning Officer by his high handed conduct even refused to accept the nomination paper presented by the election petitioner, the Returning Officer who had been summoned as a witness on behalf of the election petitioner, on the other hand has stated on oath in the witness box that the election petitioner had entered his office at about 2.58 pm on 23-4-2008, the last date for presentation of the nomination papers ; that at that time he was busy scrutinizing the nomination paper that had been presented by another candidate ; that the act of scrutinizing that nomination papers and administering oath to that candidate etc., all took more than seven to eight minutes ; that the election petitioner who had entered his office stood there and left the office ; that she did not even request him to accept her nomination paper and therefore there was no occasion for him to either scrutinize or reject the nomination paper.

133. If the version of the Returning Officer to the effect that the election petitioner never requested him to accept her nomination paper is to be believed or to be accepted, then nothing further remains for examination in this election petition and it has to be dismissed. However, if the version of the Returning Officer is not believed or not accepted. Then the next stage is as to whether non receipt of the nomination papers or non acceptance of the nomination papers on the part of the Returning Officer if can amount to rejection of the nomination paper.

134. The evidence of PW.3-the Returning Officer thought had been summoned as a witness on behalf of the petitioner has to be examined with a little more care, caution and probity. PW.3 is the Returning Officer who had conducted the elections and the petition everments is that the Returning Officer had declined to accept the nomination papers presented by the petitioner when it was so presented during the time permitted for presentation of nomination papers on the last date for receiving nomination papers. Quite naturally, this witness is on the defensive facing allegations and therefore his statements have to be scrutinized a little seriously for its acceptance. PW.3 has identified the election petitioner as an intending candidate in 151. K.R. Pura Legislative Assembly Constituency. He has stated that he cannot recollect precisely that the petitioner had met him on three occasions on that day for the purpose of filing of her nomination papers, but states he remembers to have seen her on two occasions on that day.

135. Facing an allegation of improper conduct, rather misconduct. The Returning Officer has conveniently stated that the election petitioner might have met on the first occasion between 3 pm and 3.15 pm and on the second occasion between 5.30 pm

and 6 pm. He has stated that he had received eighteen nomination papers presented on behalf of eight different candidates. The statements that he did not refuse to accept the nomination papers presented by the petitioner for being not accompanied by necessary documents as it was never presented before the Returning Officer by the petitioner has been strongly relied upon by the respondent and his learned senior counsel who were urging that the election petition should be dismissed as the election petitioner had never presented her nomination papers to the Returning Officer.

136. However, this witness has stated that the election petitioner had approached him with a request to accept Ex.P1-nomination paper along with a written representation between 5.30 pm and 6 pm on 23-4-2008 and with a further request that she will supplement the details of part number. Serial number of the voters/proposers in the current voters list of the constituency before the time for scrutiny. But the Returning Officer refused to oblige her as he was not enabled to accept the same. He has stated that he is quite conversant with the guidelines issued by the Election Commission of India, in the matter of acceptance of nomination papers and that it can be only between 11 AM and 3 pm and therefore he had no choice but to reject the request of the petitioner.

137. However, very surprisingly, this witness during the course of cross examination by Sri Shashikantha, learned counsel for the respondent has stated that on 23-4-2008 at about 2.58 pm he had received nomination papers of one Smt. Ambujakshi and while he was processing the nomination paper of Smt. Ambujakshi, he had seen the petitioner entering his office. He has answered that the petitioner just went to his office, sat and left and that she had met him again outside his office when he had finished the business for the day and was walking out of his office at around 5.30 pm and had made a request to him to accept her nomination paper which he had refused. To a further question during cross examination, he has stated that the petitioner did not request him to accept her nomination paper during her first visit.

138. Sri Nanjunda Reddy, learned senior counsel appearing for the respondent, has very strongly urged that the version of the election petitioner that she had presented her nomination papers though not containing full particulars well before 3 pm on the last date, it was not accepted by the Returning Officer, which was supported by the petitioner during her testimony and also by PW.2 who is the husband of the petitioner ; that while appreciating the evidence of these witnesses, the self serving testimony of PWs 1 & 2 should be discarded vis-avis evidence of PW.3 an independent witness, an official who had the responsibility to conduct elections in the constituency being the Returning Officer and who had received not less than eighteen nomination papers and could not have found it any burden or ordeal for receiving one more set of nomination papers if it should have been really presented and therefore PW.3's version should be accepted to the effect that the election petitioner had never presented her nomination papers whether duly filled up or otherwise within the permitted hours for presentation of the nomination papers on the last date for receiving nomination papers.

139. What this court is concerned in this election petition is about the presentation of nomination papers by the election petitioner and it is receipt or Non receipt by the Returning Officer and not that of other candidates. The Returning Officer whose deposition was not consistent with regard to the presentation of her nomination papers by the election petitioner and has conveniently deposed that the petitioner though was present in his office with her nomination papers before 3 pm on the last date for presentation. States that she simply came to his office, sat there and left and did not make any request to the Returning Officer to receive her nomination papers. But, on the order hand, this witness also has stated that he identifies the election petitioner as an intending candidate in 151. K.R. Pura Assembly Constituency and admits her having met him at least on two occasions on the last date for presentation of the nomination papers if not on three occasions as stated by the election petitioner and other witnesses. In this regard, the election petitioner has pointed out that as per paragraph 12.2 of Chapter-V, relating to nominations, in the Handbook for Returning Officers issued by the Election Commission of India, reading as under :

> "12.2. It may so happen that some intending candidates and /or their proposers are physically present in the Returning Officer's office at 3.00 P.M. for presenting their nominations, but because of their large number and because of the reason that nominations are to be received one by one. It may not be possible for the Returning Officer to physically receive all such nominations before 3.00 P.M. In such cases, the Returning Officer shall accept nomination of all intending candidates who are present in the office of

the Returning Officer at 3.00 PM. for filing nomination and treat these nomination papers to have been delivered withi the prescribed time under the law. For this purpose. If considered necessary, you may close the entry to your office room exactly at 3.00 PM and distribute slip to those present at that time." it was the bounden duty of the Retruning Officer to receive the nomination papers of all persons who are persons in the office of the Returning Officer by 3 PM even beyond the permitted hours and if need be by issue of slips to such persons who are also present in his office by 3 PM and by closing the entry to the office room exactly at 3 PM.

140. Perhaps, the Returning Officer being too very well aware of these instructions, has found it convenient to state before the court that as per his memory, not only the election petitioner met him for the first time between 3 pm and 3.15 pm on that day, but also has taken care to state that she did not present the Ex.P1 before him on that day and never made a request to that effect, but simply came to his office, sat and left. Unfortunately, the Returning Officer appears to be keen on safeguarding his own personal interest having realized the mistake/folly that he had committed than realizing that he is on oath and while deposing as a witness before the Election Tribunal and should only be speaking truth. A person intending to be a candidate in a constituency does not go to a Returning Officer's office for fun or some entertainment, but only for the business of presenting the nomination papers. The inconsistent manner in which this witness has spoken leaves this court with no doubt that he is uttering falsehood on oath.

141. Such line of making false statements on oath is pursued by this witness when he states that the election petitioner met him on the second time on that day between 5.30 pm and 6 pm and had attempted to present the Ex.P1-Nomination papers along with a written representation etc.

142. The Returning Officer has forgotten that no person will be allowed to enter the premises of the Returning Officer between 5.30 pm and 6 pm as even as per the instruction from the Election Commission of India. The entry to his office room will be closed by 3 pm and those who are inside the office by 3 pm will be enabled to present their nomination papers by issue of indentification slips.

143. In terms of the the provisions of sections 33, 55 and 36 of the Act read with Rule 4 and parts-IV & V of Form-2B format in which nomination papers are required to be presented in respect of elections to an Assembly Constituency. It is obvious that rejection can only be at the scrutiny time of a nomination paper received earlier. A nomination paper not at all received by the Returning Officer does amount to rejection of nomination paper for the purpose of section 100(1)(c) of the Act if non receipt of nomination papers is without justification. It is here that statement of PW 3 to the effect that the election petitioner never presented her nomiatnion papers assumes importance and when it is found by this court that the Returning Officer is lying on oath in making such statement, if the Retunring Officer has not even looked into the nomination papers for receiving or not receiving, it amounts to a rejection without giving reasons. It is because of the legal position that non receipt of nomination papers even without scrutiny amounts to improper rejection of nomination papers and on appreciation of evidence this court is inclined to believe the version of PWs. 1 & 2, vis-a-vis versionof PW.3, having regard to the background the circumstance and the fact that the entire developments have taken place inside the office of the Returning Officer and on the last date for presentation of nomination papers to the assembly constituency, non receipt of nomination papers amount to non acceptance of nomination papers on the part of the Returning Officer and in law amounts to rejection of the nomination papers.

144. Insofar as the nomination of candidates presentation of nomination papers requirements for valid nominations are concerned, they are governed by sections 30 and 33 of the Act. While a perusal of these statutory provisions read with Rule-4 of the conduct of Election Rules, 1961 and Form 2B-format in which the nomination papers have to be presented in respect of elections to a State Assembly, particularly, Part-IV of the nomination paper in Form-2B reading as under :

**"Decision of Returning Officer accepting or rejecting the Nomination Paper.**

I have examined this nomination paper in accordance with Section 36 of the Representation of the People Act, 951 and decide as follows :

Date: ................. Returning Officer "

does indicate that the Returning Officer has the discretion to reject a nomination paper even during its acceptance but by giving reasons and therefore there cannot be any doubt that a wrongful non acceptance of the nomination paper can also amount to an improper rejection of the nomination paper coming within the scope of section 100(1)(c) of the Act. More important question will be whether the nomination paper has been improperly rejected. In the sense, non acceptance or non receipt of the nomination papers presented by the election petitioner amounted to an improper rejection.

145. It is in this area the respondent has joined issue by contending that the nomination papers that were sought to be presented by the election petitioner cannot even be termed as a valid nomination paper as is required under section 33 of the Act and also for the added reason of non compliance with section 34 of the Act which is a mandatory requirement and which in fact by a fiction of law presumes a candidate to be not duly nominated for any constituency unless the deposit is made or taken any steps to ensure deposit is made ; that the nomination papers had not been properly filled up at all and that it did not have the support of requisite number of election in the constituency ; that the election petitioner's name did not figure in the constituency where she claimed she was a voter as the name in the electoral list did not tally with the name of the election petitioner with reference to which she had claimed to be a voter in C.V. Raman Nagar Constituency etc.

146. Even assuming all this, the question that remains for examination will be can a nomination paper be rejected even without scrutiny, whether a preliminary scrutiny at the stage of reception of the nomination papers or a notified statutory scrutiny under section 36 of the Act. If the rejection is without either scrutiny ? In other words, can a non receipt of the nomination papers without scrutiny at the preliminary stage can be justified by a post facto demonstration of the nomination papers being only such as one deserving rejection in a scrutiny under section 36 of the Act ?

147. In this election petition this question arises as if has been noticed that the Returning Officer has not come out with true facts on the aspect of his discharge of official duty as a Returning Officer.

148. The Returning Officer has come out with differenct version of the same incident at different points of time while deposing in the witness box and it is obvious that the Returning Officer has lied on oath and in the witness box if he is to speak of two factual possiblilities of the same incident. At any rate, it definitely does not inspire the confidence of the court to accept his version as truthful or a proper version. Irrespective of the consequence that an official has to face if he has uttered falsehood on oath while deposting as a witness before the court.

149. One another circumstance which compels this court to infer that the Returning Officer has lied on oath is that in the written statement filed by the respondent as contained in paragraph-13 of the written statement to counter the specifie plea contained in para 1(7) of the election petition and the pleadings therein which reads as under :

> "13 Regarding Para I(7) of the Election Petition:
>
> The averment made in para No. I(7) of the Election Petition that the Petitioner with the duly filled nomination papers alongwith required Annexure approached the 4th Respondent at 1400 hours on 23rd April 2008 and delivered her nomination papers together with all Annexures is denied by this Respondent as far from truth. In this paragraph the Petitioner has referred to the Returning Officer as 4th Respondent. Since there is no 4th Respondent to the Election Petition referring to the Returning Officer as 4th Respondent is meaningless and misleading. It is submitted that the answering Respondent has filed his nomination papers on 23-4-2008 around 11.30 am. Thereafter this Respondent once again came to Returning Officer's office around 1.00 pm and and out of curiosity, was present inthe said office to know the details of all the candidates who have filed their nomination papers until the last minute of the last day. For this purpose the answering respondent was present in the office of the Returning Officer of the K.R. Puram Constituency from 1.00 pm to 4.00 pm on 23-4-2008. During that time the Petitioner has not come to file her nomination papers before the Returning Officer. After reading the list of persons who have filed their nomination papers for the election which was published around 4.00 pm on the notice

board. The answering Respondent left the office of the Returning Officer. The other contentions taken by the answering Respondent in this written statement are without prejudice to this contention . Further it is pertinent to note that the Petioner has not deposited Rs. 5,000/- (per set of nomination paper) towards security deposit as required under law with the Returning Officer or with Reserve Bank of India or with Government Treasury receipt of which requires to be presented before Returning Officer while presenting the nomination paper until 3.00 pm on 23-4-2008. This inaction of the Petitioner clearly reveals that she has not visited the office of the Returning Officer on 23-4-2008 and has filed this Election Petition after making false and misleading statements so as to achieve her ulterior motive. The Petitioner's conduct in not depositing paper until 3.00 pm on 23-4-2008 reveals that the Petitoner was thoroughly negligent throughout. Further, observers designated and sent by Election Commission of India were on duty in Bangalore also on 23-4-2008 and their name, mobile numbers were given with sufficient publication and their details were made available in many Government offices and in the offices of all Returning Officers. Petitioner filed no complaint before the obserner. Non filing of such a complaint only confirms that grievances of Petitioner is only a false story and not a fact. There is no evidence whatsoever which revecals the visit of the Petitioner to the office of the Returning Officer on 23-4-2008. "Therefore questions of deliverting her nomination paper together with all Annexures and Petitioner requesting the Returning Officer for the latest Electoral Roll of K.R. Pura constituency on that day does not arise. Therefore question of 4th Respondent expressing that he is not in a possession of said Electoral Roll. Also does not arise. In the circumstances. The Returning Officer asking the Petitioner to approach the Revenue Officer for verifying the part number and serial number of propsers in the Electoral Rolls is far from truth."

the respondent has contended that averments in para 1(7) of the election petition contains only falsehood and pleadings far from truth. The respondent has averred that he had himself filed nomination papers at 11.30 am on 23-4-2008 but again strangely says that out of curiosity he came to the office of the Returning Officer at around 1 pm and remained int he office of the Returnig Officer up to 4 pm on that day. Averment is that the petitioner never came to the office of the Returning Officer during this time i.e., between 1 pm 4 pm on 23-4-2008.

150. Unfortunately for the respondent the Returning Officer himself has admitted that the election petitioner was present in his office when he was receiving the nomination papers of another candidate by name Smt. Ambujakshi, but she did not request him to accept her nomination papers. Obviously, the respondent has not come out with a true plea as per his pleadings in paragraph-13 of the written statement. The fact that the respondent did not choose to enter the witness box, did not choose to lead evidence to support this plead only compels this court to draw an adverse inference against the respondent on this aspect and therefore first part of issue No. 3 has to be answered in favour of the petitioner. The second part relating to election petitioner being enabled to rectify the defects in the nomination papers before the scrutiny time and the petitioner proving the same becomes acadmic in view of the legal position being in favour of the election petitioner. Issue No. 3 is answered in favour of the election petitioner.

151. In the wake of the pleadings while as many as twelve issues had been framed. While some of them have been answered in view of the orders passed on two miscellaneous applications, Misc. Cvl. 15204/2009 & 15572/2009 dated 8-10-2009 and 12-11-2009 respectively. These orders have been made subject matter of civil appeal Nos. 5142/2011 and 5143/2011 and the orders passed by this court on the miscellaneous applications having come to be affirmed by the Judgement of the Supreme Court as per its common Judgement rendered in the above referred two civil appeals, the order passed by this court on 8-10-2009 and 12-11-2009 become part of this order also for answering these issues. Issues covered by these orders are answered accordingly.

152. The present election petition presents a very peculiar situation. There are not many parallels or precedents to the same and even the authorities are not forthcoming covering a situation of this nature. Insofar as the facts are concerned. The question is only as to whether the petitioner had presented her nomination paper during the hours fixed for presentation. If this fact is found in favour of the petitioner, then arises the next question as to legal consequence that follows.

153. An overall reading of the pleadings and the oral evidence adduced by the petitioner in the form of deposition of PWs.1 & 2 if accepted goes to show that the petitioner had made efforts to present her nomination papers and for such purpose was inside the office of the Returning Officer before 3 pm on the last date fixed for receiving the nomination papers.

154. It is the Returning Officer who was examined as PW.3 who has stated to the contrary to the effect that the petitioner never requested the Returning Officer to accept her nomination papers within the permitted hours for presentation of nomination papers. While material on record particularly in the form of documentary evidence does show that the petitioner had made efforts to file her nomination papers and it was only for such purpose she was in the office of the Returning Officer and the presence of the petitioner in his office before the closing hours for receipt of the nomination papers on the last date is also admitted by the Returning Officer, submissionof Sri Nanjunda Reddy, learned senior counsel for the respondent on this aspect is that the petitioner shold have treated him as a hostile witness and cross examined him, but not having done so the court has to accept the evidence of the Returning Officer at its face value and if so nothing further follows as the petitioner had never presented her nomintation papers and therefore the election petition deserves to be dismissed.

155. I have examined this question with a little seriousness in the background of the provisions of section 100(1)(c) of the Act. The role of the Returning Officer while accepting the nomination papers had come in for examination by the Supreme Court in the case of **UTTAMRAO SHIVDAS JANKAR** (supra) in paragraph-28 reading as under :

> "28. The Returning Officer is a statutory authority. While exercising his power under Section 36 of the Act, he exercises a quasi judicial power. For the said purpose, the statute mandates him to take a decision. A duly of substantial significance is cast onhim. As in the present case, by his order the fulcrum of the democratic process. Viz., election can be set at naught. Improper rejection of nomination paper in the instant case, may lead a party not to enter into the fray of elections. It is also now a trite law that once a finding is arrived at by the Election Tribunal that the order of rejection the nomination was improper which would take within its umbrage not only the decision making process but also the merit of the decision, no further question is required to be gone into. The Tribunal had no other option but to set aside the election of the winning candidate."

156. The case of the election petitioner is that it is a case of improper rejection of nomination papers by non receipt. The Returning Officer has stated that there was no presentation at all. The manner in which the Returning Officer has deposed before the court has not only compelled this court to doubt his statements on oath for its truthfulness or for stating the correct facts, but also has compelled the court to draw an inference that he has not performed his statutory duty in a proper manner. By now it is well settled legal proposition by series of judicial pronouncements that insofar as the ground of improper rejection of nomination papers is concerned coming within the scope of section 100(1)(c) of the Act, an improper rejection by itself is good enough and inevitably results in setting aside an election irrespective of the question as to whether such an improper rejection could have materially affected the outcome of the elections. Section 100(1)(c) of the Act presents a very peculiar situation where the fate of an elected candidate hings not on his own conduct or ability to win an election but on the conduct of a Returning Officer-a statutory functionary.

157. In fact, the returned candidate who has been arrayed as a respondent and is in the position of an adversary to the election petitioner has absolutely no role to play except to defend the election petition but for pointing out any technical defects in the petition.

158. The averments in the petition in a situation of non acceptance of nomination papers will only be against the Returning Officer. I find this is a situation where the Returning Officer has tried to become wise after the event as even improper Non acceptance will affect the result of the elections.

159. The Judgment of the Supreme Court in the case of **'POTHULA RAMA RAO v. PANDYALA VENKATA KRISHNA RAO & OTHERS** reported in **AIR 2007 SCW 5320** while is no doubt an authority for the proposition that a nomination paper of a candidate not set up by a recognized political party can be rejected if it is not supported by the proposal of the candidate by ten voters in the constituency and in an election petition questioning such rejection, the averments that the nomination paper was supported by ten voters in the constituency is a material pleading want of which can only result in dismissal of the election petition also. In the present case the fact situation is that the Returning Officer did not reach this stage at all as it is his own statement that he had no occasion to scrutinise the nomination papers as it was never presented by the petitioner. The present petition cannot be decided on the authority of the Judgment in the case of **POTHULA RAMA RAO** (supra).

160. The question as to whether the nomination papers sought to be presented by the petitioner was validly filled up or whether it could have passed the stage of scrutiny in terms of section 36 of the Act becomes academic, as if the Returning Officer had refused to receive the nomination papers itself in the first instance. Preliminary examination under section 33 of the Act or scrutiny under section 36 of the Act did not arise as according to the Returning Officer he had no occasion to look into the nomination papers. If it is found so, nothing further requires to be examined and the election petition has to be allowed.

161. It is because of this reason. I am of the opinion that various objections raised on behalf of the respondent either to the format of the election petition or the manner of verification or other pleadings relating to the nomination papers being filled up in full ad proper manner do not assume significance for dismissal of an election petition on such premise though it is strongly urged so by Sri. Nanjunda Reddy, learned senior counsel appearing for the respondent.

162. The significance of pleadings in an election petition is to accord a proper opportunity to the respondent inevitably the candidate declared as elected to meet the averments made in the petition to defend his election and the result and therefore the pleadings should be precise, clear and to disclose correct cause of action to enable the respondent to defend the petition in a proper manner. If the Pleadings do not disclose the ground for setting aside an election petition. There is no question of disturbing the result of an election through such a petition.

163. By and large, election petititons are on the ground of some misconduct or shortcomings on the part of the returned candidate having a bearing on the outcome of the election. In such a situation, pleadings does assume importance and has great significance and courts insist on the pleadings adhering to the requisite procedures to the hilt. It is in this background many election petitions have come to be rejected by courts for want of a propoer plea or pleadings not disclosing a proper cause of action or allegations levelled against the declared candidate not revealing full particulars of the conduct and role played by the respondent. A petition under section 100(1)(c) of the Act presents an entirely different scenario. If at all, it is only the Returning Officer who faces accusation and any grounds raised in support of such petition is one of directly making allegations about the conduct of the Returning Officer.

164. This is a very peculiar situation where persons against whom averments in the nature of allegations are made does not figure as a respondent even to meet the averments and even judicial pronouncements have leaned in favour of a petitioner containing such other persons as respondents to be dismissed on the ground of misjoinder of parties. The respondent i.e., the declared candidate who may or may not know about the developments averred in the election petition is the adversary and is given an opportunity to defend the petition. A situation where rejection of nomination papers is on the basis of abjections raised by the respondent as a candidate or by his representatives or agents. The respondent can definitely have a say in the matter to contest the pleadings. But in a situation of the present nature, when the respondent need not be present or in a situation when he is not even present, there is very little that the respondent can do with regard to the averments in the petition accusing the Returning Officer of some dereliction of duty or improper functioning.

165. Very strangely, in the pleadings int he present petition, the respondent has made an averment in the written statement that he had put stayed in the office of the Returning Officer during the hours between 1 PM and 4 PM on the last date for

receiving nominations and he did not see the election petitioner entering office of the Returning Officer during these hours. More importantly. A statement or plea of this nature which has a direct bearing on the outcome of the election petition has not been substantiated nor the respondent has made any efforts to make good the statement.

166. On the other hand a plea of this nature which is in the nature of an admission raises further questions as to why a candidate who had already presented his nomination papers chose to get back to the office of the Returning Officer at 1 PM and as to how he was permitted to stay there up to 4 PM on that day. This is a circumstance which compels this court to not only reject the version of the Returning Officer but also to draw an adverse inference against the respondent as rightly contended by the petitioner. Respondent's stay in the office of the Returning Officer during the period from 1 PM to 4 PM does raise questions about the purpose of his stay there and possibilities of his presence having a bearing and having influenced the decision of the Returning Officer and the legality of his stay and the consequences of such illegal stay in the elction petition. It is definitely an circumstance which goes against the respondent that his conduct in staying in the office of the Returning Officer for such a long duration and that too after having presented his nomination papers at 11.30 AM on that day and leaving the office of the Returning Officer only after the Returning Officer published on the notice board the names of the candidates who had filed their nomination papers etc.

167. Before concluding this order this court has to necessarily bestow attention to the conduct and manner of deposing by the Returning Officer who had been summoned by the petitioner as PW.3.

168. The Returning Officer thought had been cited as a witness by the petitioner and is also identified as PW.3 indicating that he is a witness on behalf of the petitioner, having regard to the nature of proceedings and having regad to the position occupied by the Returning Officer in conduct of election under the provisions of the Act, more so, in the wake of observations made by the Supreme Court in the case of **UTTAMRAO SHIVDAS JANKAR** (supra), the Returnig Officer is a statutory authority for performing a public duty. He cannot be treated as a witness either for an election petitioner or for the respondent in an election petition, in the sense, that he has been summoned /cited as a witness by other party to support or prove his/her case. In fact, the election petition under the provisions of the Act does not partake the character of adversary litigation between two litigants approaching the court seeking for relief against the adversary. It is more so in the case of an election petition presented before the court on the ground of section 100(1)(c) of the Act for voiding the result of an election. It is precisely for this reason this court has not accepted arguments of Sri. Nanjunda Reddy, learned senior counsel appearing on behalf of the respondent that PW.3- Returning Officer having been cited as a witness on her behalf by the election petitioner and his statement on oath to the effect that the petitioner made no efforts at all to present her nomination papers shold be taken as an admission on behalf of the petitioner by her witness and therefore the election petitioner by her witness and therefore the elction petition should be rejected outright. In fact, it is for the very reason that the argument to the effect that unless the election petitioner had treated PW.3-Returning Officer as a hosite witness and as PW.3 was subjected to cross examination on behalf of the petitioner and to impeach his creditworthiness, his statement binds the petitioner and accepting the same, the election petition should be dismissed is also an argument not commending for acceptance before this court. A Returning Officer, in fact, is more in the nature of a court witness and is required to answer all questions posed by the court also truthfully. In this beckground as to whether a witness of this nature can be allowed to be examined even by posing leadings questions in chief examination in terms of section 142 of the Indian Evidence Act, 1872 or if such a witness can be subjected to cross examination and pose such questions which perhaps could have been put by the adverse party, by seeking leave of the court and if the person so desirous of cross examining has not sought leave of the court, the matter ends with that also does not assume significance and recedes to background as witness essentially is a court witness. Even otherwise, legal position in this regard is well settled in this country to the effect that it is always in the discretion of the court to permit any such question to be put to a witness by other party.

169. In the instant case, this court has noticed that the Returning Officer even while deposing on oath has stated inconsistently with regard to the time of presentation of nomination papers by the petitioner and the manner of its presentation. A Returning Officer is a very responsible statutory functionary whose decisions can have a great bearing on the outcome of elctions in making or marring the careers of persons with political aspirations and in a Parliamentary democratic system, can even have a bearing in the formation of governance by political parties. A Returning Officer is expected to act in an impartial manner, without any

bias or prejudice, against any person and to perform his duty in a manner to achieve the purpose and object of the Act, particularly, while acting as a Returning Officer whose primary duty is to receive the nomination papers scrutinize and if found defective or not in conformity with the requirements of the statute, to reject it by recording reasons. If a Returning Officer acts in a manner either at variance or in a non compliant manner with the statutory provisions. Particularly, while accepting the nomination papers. If can definitely have a bearing on the outcome of the elections. Such a situation should be avoided at all costs. An erreant Returning Officer can derall the democratic process. A non performing, a non law conforming conduct of the Returning Officer even if unwittingly so, will also lead to the same situation. A Returning Officer having such vast duties and responsibilities when is before the court, is expected to answer truthfully the questions posed either by counsel on behalf of the party who has cited him as a witness or posed by the court and it is here PW.3-the Returning Officer has not merely did not inspire the confidence of the court to accept his statement as truthful, but has prima facie, given an impression tha he is not speaking truth on oath. The Returning Officer lying on oath while deposing before the court as a witness is clearly a situation warranting action in terms of section 193 of the Indian Penal Code, 1860. In my understanding a statement on oath by the Returning Officer to the effect that the petitioner never presented or made any efforts to present her nomination papers before the Returning Officer within the permitted hours for presentation of nomination papers on the last day for filing and receiving of the nomination papers in the elections is clearly a false statement made before this court with an intention to avoid repercussions on him and to cover up lapses on his part.

170. In a democracy and in the context of elections in Parliamentary system of democracy, the persons in charge of conduct of election play a very vital and important role. The role of a Returning Officer in the elections to the Assembly and Parliament is very crucial. A Returning Officer should be a person not merely well conversant with the practices, procedures and the election laws, but also should be an Officer who has the right temperament, a commitment to the job and to his position and should be one facilitating he conduct of elections in a positive manner.

171. In the matter of receipt and acceptance of nomination papers the Returning Officer should play a positive role to enable intending candidates to present the nomination papers, should not act in a discouraging or negative manner. Election laws do not prescribe any minimum educational qualificaction for a candidate as of now and it is quite possible many a times candidates are ignorant of the procedures and may be even illiterates. While in the case of an official candidate of a recognized political party, the party can take care of some of the details relating to compliances with procedural requirements. In so far as independent candidates who do not have such advantage are concerned, the Returning Officer should play a positive role to facilitate such a candidate to present nomination papers in a proper manner and should not conduct either in a manner to discourage or to browbeat or in a partisan manner. It is very essential to ensure that only such persons are posted in the sensitive post of a Returning Officer.

172. Unfortunately in the present case, it is found that the Returning Officer while has been accused of acting in a discouraging manner, in fact, it is found that he is also lying on oath during the course of giving his statement before this court. Such incidents will have a very negative impact in a democratic system and therefore the Election Commission of India which is incharge of conducting elections in this country, should take care to identify proper, qualified officials with bonafides and commitment alone are nominationed/posted in such a crucial role.

173. In the present political scenario of multiplicity of political parties and elections being held during governance and rule by one political coalition and the phenomenon of party in power having a tendency to use, misuse or even abuse, it being in power, it is very essential that statutory functionaries like Returning Officers who have been vested with statutory powers of far reaching consequences are required to act in a fair and statute conforming manner and do so to the hilt.

174. It is also of utmost imporatance that when such statutory authorities are summoned before the court either for production of documents or for testifying some of the facts to which they are privy, they do so in a diligent and truthful manner. A Returning Officer giving an impression before the court that he is not testifying truthfully but is uttering falsehood on oath is a serious matter and cannot be brushed aside lightly. In fact, witnesses giving false evidence itself is a very serious matter affecting the efficacy of justice dispensation system. It is afortiori so in the case of public functionaries and statutory authorities doing so before the court on oath and while testifying as a witness.

175. It is for this reason, this court directs the Registrar General of this court to register a complaint against PW3-the Returning Officer before the competent court for proceeding in accordance with law for the purpose of provisions of section 193 of the Indian Penal Code, 1860 for giving false evidence before this court.

176. In view of my above findings, the issues already framed are answered as under though some of them may not really survive for examination and answer, but nevertheless, issues are answered for the sake of completion and on the basis of the pleadings and evidence.

177. Issue No. 1 is answered in the positive and in favour of the petitioner by holding that there is sufficient evidence on record to conclude that the election petitioner was a candidate within the meaning of this expression for the purpose of presentation of election petitioner under section 81 of the Act in respect of election petition presented on the grounds of section 100(1)(c) of the Act for voiding an election.

178. Issue No. 2 is answered partially in favour of the petitioner by holding that the petitioner had made efforts to present her nomination papers before the Returning Officer, but the further question as to whether such nomination papers merited scrutiny within the scope of section 36 of the Act is not answered as if has become academic and the outcome of the election petition is not based on this finding.

179. Issue No. 3 is also answered partly in favour of the petitioner for holding that she had made attempts to present her nomination papers on 23-4-2008 but it was neither received nor scrutinized by the Returning Officer and therefore the further question that the defect would have been rectified within the next 24 hours i.e., before the actual scrutiny by removing the defects is not gone into as it becomes academic, but even the non acceptance is held to amount to rejection of nomination papers within the scope of section 100(1)(c) of the Act.

180. Issue Nos. 4 & 5 are answered in the affirmative Issue Nos. 6, 7, 8, 9, 10 & 11 are answered in the negative Issue No. 12 is answered in the affirmative.

181. In the result, this election petition is allowed.

182. It is hereby declared that the result of elections to 151. K.R. Pura Legislative Assembly Constituency in Bangalore Urban District is voided in terms of section 100(1)(c) of the Act, due to improper rejection of the petitioner's nomination papers and declaration of result in the election declaring the respondent as an elected candidate to the constituency is hereby set-aside.

183. In the peculiar circumstances, parties are left to bear their respective costs.

**-Sd/-**
**JUDGE**

By Order
**RAJAN KUMAR**
Principal Secretary,
Election Commission of India.

**P.R. 42**

## ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

### ಅಧಿಸೂಚನೆ

**ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 28 ಕೇಶಾಪ್ರ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 31ನೇ ಜುಲೈ, 2012.**

2012ನೇ ಸಾಲಿನ ಮೇ 12ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ 1 ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Indian Mendical Council (Amendment) Act, 2012 (No. 20 of 2012) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

## MINISTRY OF LAW AND JUSTICE

**(Legislative Department)**

**New Delhi, 12th May, 2012**

The following Act of Parliament received the assent of the President on the 12th May, 2012, and is hereby published for general information:-

**THE INDIAN MEDICAL COUNCIL (AMENDMENT) ACT, 2012**

**(No. 20 of 2012)**

[12th May, 2012]

An Act further to amend the Indian Medical Council Act, 1956.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:-

1. **Short title and commencement.-**(*1*) This Act may be called the Indian Medical Council (Amendment) Act, 2012.

(2) It shall come into force on the 15th day of May, 2012.

2. **Amendment of section 3A of Act 102 of 1956.-** In section 3A of the Indian Medical Council Act, 1956, in sub-section (*2*), for the words ``two years'', the words ``three years'' shall be substituted.

**V. K. BHASIN,**

Secy. to the Govt. of India.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

**ಆರ್. ಆಂಜಿನಿ,**

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ

ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

**ಪಿ.ಆರ್. 47**

**ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ**

**ಅಧಿಸೂಚನೆ**

**ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 29 ಕೇಶಾಪ್ರ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 31ನೇ ಜುಲೈ, 2012.**

2012ನೇ ಸಾಲಿನ ಜೂನ್ 21ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ 1 ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Institutes of Technology Amendment Act, 2012 (No. 34 of 2012) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

## MINISTRY OF LAW AND JUSTICE

**(Legislative Department)**

New Delhi, the 21st June, 2012

The following Act of Parliament received the assent of the President on the 20th June, 2012, and is hereby published for general information:-

**THE INSTITUTES OF TECHNOLOGY AMENDMENT ACT, 2012**

**(No. 34 of 2012)**

[20th June, 2012]

An Act further to amend the Institutes of Technology Act, 1961.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows :-

1. **Short title and commencement.-**(*1*) This Act may be called the Institutes of Technology( Amendment) Act, 2012.

(*2*) It shall come into force on such date as the Central Government may, by Notification in the Official Gazette, appoint.

2. **Amendment of section 2.-** In the Institutes of Technology Act, 1961(59 of 1961) (hereinafter referred to as the principal Act), in Section 2, for the words "and the Indian Institute of technology, Roorkee'', the words "the Indian Institute of Technology, Roorkee, the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhi Nagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Indore, the Indian Institute of Technology, Jodhpur, the Indian Institute of technology, Mandi, the India Institute of Technology, Patna, the Indian Institute of Technology, Ropar and the Indian Institute of Technology (Banaras Hindu University), Varanasi'' shall be substituted.

3. **Amendment of section 3.-** In section 3 of the principal Act,-

*(a)* in cluase (c), after sub-clause *(iv),* the following sub-clauses shall be inserted, namely:-

"(v) in relation to the society known as the Indian Institute of Technology, Bhubaneswar, the Indian Insitute of Technology, Bhubaneswar

(vi) in relation to the society known as the Indian Institute of Technology, Gandhinagar, the India Institute of Technology, Gandhinagar ;

(vii) in relation to the society known as the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Hyderabad ;

(viii) in relation to the society known as the Indian Institute of Technology, Indore, the Indian Institute of Technology, Indore ;

(ix) in relation to the society known as the Indian Institute of technology, Rajasthan, the Indian Institute to Technology, Jodhpur ;

(x) in relation to the society known as the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Mandi ;

(xi) in relation to the society known as the Indian Institute of Technology, Patna, the Indian Institute of Technology, Patna ;

(xii) in relation to the Society known as the Indian Institute of technology, Punjab, the Indian Institute for Technology, Ropar ;

(xiii) in relation to the Institute of Technology, Banaras Hindu University, referred to in Statute 25(A)(I) of the Statutes set out in the Schedule to the Banaras Hindu University Act, 1915, (16 of 1915) the Indian Institute of Technology (Banaras Hindu University), Varanasi,'';

(*b*) after clause (*g*), the following clause shall be inserted, namely :-

'(*ga*) "Institute of Technology, Banaras Hindu University" means the Institute of Technology, Banaras Hindu University, referred to in Statute 25(a) (1) of the Statutes set out in the Schedule to the banaras Hindu University Act, 1915 ;' (16 of 1915).

(*c*) in clause (*j*), after sub-clause (*iii*), the following sub-clauses shall be inserted, namely :-

"(iv) the Indian Institute of Technology, Bhubaneswar;

"(v) the Indian Institute of Technology, Gandhinagar;

"(vi) the Indian Institute of Technology, Hyderabad;

"(vii) the Indian Institute of Technology, Indore;

"(viii) the Indian Institute of Technology, Rajasthan;

"(ix) the Indian Institute of Technology, Mandi;

"(x) the Indian Institute of Technology, Patna;

"(xi) the Indian Institute of Technology, Punjab;'';

(d) after clause (l), the following clause shall be inserted, namely :-

'(m) "zone", in relation to an Institute, means such group of States and Union territories as the Central Government may, by Notification in the Official Gazette, specify.'.

**4. Amendment of section 4.-** In section 4 of the principal Act, after sub-section (*1C*), the following sub-section shall be inserted, namely :-

"(ID) The Institute of Technology, Banaras Hindu University shall, on such incorporation, be called the Indian Institute of Technology (Banaras Hindu University), Varanasi".

**5. Amendment of section 5.-** In section 5 of the principal Act, the *Explanation* shall be numbered as Explanation I thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely :-

"Explanation 2.- The reference in this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhinagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of technology, Indore, the Indian Institute of Technology, Jodhpur, the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Patna and the Indian Institute of Technology, Ropar, as the reference to the due date on which the provisions of the Institutes of Technology (Amendment) Act, 2012 come into force.".

**6. Insertion of new section 5B.-** After section 5A of the principal Act, the following section shall be inserted, namely :-

**"5B. Effect of incorporation of Indian Institute of Technology (Banaras Hindu University), Varanasi.-** On and from the commencement of the Institutes of Technology (Amendment) Act, 2012.-

(a) any reference to the Institute of Technology, Banaras Hindu University in any law for the time being in force (other than this Act) or in any contract or other instrument shall be deemed as a reference to the Indian Institute of technology (Banaras Hindu University), Varanasi ;

(b) all property, movable and immovable, of or belonging to the Institute of Technology, Banaras Hindu University, shall vest in the Indian Institute of Technology (Banaras Hindu University), Varanasi ;

(c) All rights and liabilities of the Institute of Technology, Banaras Hindu University shall be transferred to, and be the rights and liabilities of, the Indian Institute of Technology (Banaras Hindu University), Varanasi ;

(d) every person employed in the Institute of Technology, Banaras Hindu University immediately before such commencement shall hold his office or service in the Indian Institute of Technology (Banaras Hindu University), Varanasi by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights an privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act has not been passed and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Indian Institute of Technology (Banaras Hindu University), Varanasi in accordance with the terms of the contract with the employee or, if no provision is made therein this behalf, on payment to him by the Indian Institute of Technology (Banaras Hindu University), Varanasi of compensation equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees :

Provided further that any reference, by whatever form of words, to the Director of the Institute of Technology, Banaras Hindu University in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Director of the Indian Institute of Technology (Banaras Hindu University), Varanasi ; and

(*e*) on the commencement of the Institutes of Technology (Amendment) Act, 2012,-

(*i*) the Vice-Chancellor of the Banaras Hindu University, appointed under the provisions of the Banaras Hindu University Act, 1915 (16 of 1915) shall be deemed to have been appointed as ex-officio Chairman of the Board of Governors of the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, and shall hold office for a period of three years with effect from such commencement.

(*ii*) the Director of the Institute of Technology, Banaras Hindu University, appointed under the provisions of the Banaras Hindu University Act, 1915 (16 of 1915) shall be deemed to have been appointed as Director of the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, and shall hold his office till Director is appointed under this Act.

*Explanation.*-The reference in this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology (Banaras Hindu University) Varanasi as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2012 come into force.''.

**7. Amendment of section 6.-** In section 6 of the principal Act, after sub-section (*l*), the following sub-section shall be inserted, namely:-

"(*IA*) subject to the provisions of this Act, every Institute may strive to meet the technological needs of the States and the Union territories included in its zone by-

(*a*) supporting and collaborating with technical education institutions located in the zone with a view to enhance their quality and capability ;

(*b*) advising the State Governments and the Union territories included in its zone in the matter of technical education and any technological issue referred by them to the Institute for advice.''.

**8. Amendment of section 11.-** In section 11 of the principal Act,

(*i*) After clause (e), the following provision shall be inserted, namely:-

"Provided that in the case of the Indian Institute of Technology (Banaras Hindu University), Varanasi,-

(*a*) the Board of such Institute shall consist of Vice-Chairman to be nominated, after a period of three years from the commencement of the Institute Techonology (Amendment) Act, 2012, by the Executive Council referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915, (16 of 1915) from amongst its members including its Vice-Chancellor,'':

(*b*) four persons to be nominated under clause (d), out of which two persons to be nominated by the Executive Council referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915, (16 of 1915) from amongst its members including its Vice-Chancellor; '';

(*ii*) the *Explanation* shall be omitted.

**9. Amendment of section 14.-** In section 14 of the principal Act, after clause (e), the following proviso shall be inserted, namely :-

"Provided that in case of the Indian Institute of Technology (Banaras Hindu University), Varanasi, three members shall be nominated by the Executive Council referred to in clause (d) of section 2 of the Banaras Hindu University Act, 1915.''. (16 of 1915).

**10. Amendment of section 38.-** In section 38 of the principal Act,

"(*a*) after clause (*i*), the following clauses shall be inserted, namely :-

"(*j*) until the first Statutes and Ordinances in relation to the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhinagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Indore, the Indian Institute of technology, Jodhpur, the Indian Institute of technology, Mandi, the Indian Institute Technology, Patna and the Indian Institute of Technology, Ropar are made under this Act, the Statutes and Ordinances of such Institute, as in force immediately before the commencement of the Institutes of Technology (Amendment) Act, 2012 shall apply to those Institutes with necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act ;

(*k*) the executive Council, referred to in clause (*d*) of section 2 of the Banaras Hindu University Act, 1915, (16 of 1915) functioning as such immediately before the commencement of the Institutes of technology (Amendment) Act, 2012 shall continue to so function until a new Board is constituted for the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, but on the constitution of a new Board under this Act, the Executive Council of the Banaras Hindu University shall cease to function so far as the Indian Institute of Technology (Banaras Hindu University), Varanasi is concerned ;

(*l*) the Academic Council, referred to in clause (*a*) of section 2 of the Banaras Hindu University Act, 1915, (16 of 1915), functioning as such immediately before the commencement of the Institutes of Technology (Amendment) Act, 2012 shall continue to so function until a new Senate is constituted for the Indian Institute of Technology (Banaras Hindu University), Varanasi under this Act, but on the constitution of a new Senate under this Act, the academic Council of the Banaras Hindu University shall cease to function so far as the Indian Institute of Technology (Banaras Hindu University), Varanasi ;

(*m*) until the first Statutes and the Ordinances in relation to the Indian Institute of Technology (Banaras Hindu University), Varanasi are made under this Act, the Statutes and Ordinances as are applicable to the Indian Institute of Technology, Kanpur immediately before the commencement of the Institutes of Technology, (Amendment) Act, 2012, shall apply to the Indian Institute of Technology (Banaras Hindu University), Varanasi with the necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act ;

(*n*) notwithstanding anything contained in the Institutes of Technology (Amendment) Act, 2012, any student who joined classes of the Institute of Technology, Banaras Hindu University on or after the commencement of 2006-2007 academic session or completed the courses on or after 2009-2010 academic session shall for the purpose of clause (*b*) of sub-section (*l*) of section 6, be deemed to have pursued a course of study in the Indian Institute of Technology (Banaras Hindu University), Varanasi provided that such student has not already been awarded degree or diploma for the same course of study ;

(*o*) if any difficulty arises in giving effect to the provisions of the Institutes of technology (Amendment) Act, 2012, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty.

Provided that no order shall be made under this clause after the expiry of two years from the commencement of the Institutes of Technology (Amendment) Act, 2012 ;

Provided further that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament .'';

(*b*) after *Explanation 2*, the following *Explanation* shall be inserted, namely:-

"*Explanation 3.-* The reference in clauses (*k*), (*l*) and (*M*) of this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology (Banaras Hindu University), Varanasi, as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2012 come into force.".

**V. K. BHASIN,**
Secy. to the Govt. of India.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,
**ಆರ್. ಆಂಜಿನಿ,**
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ
ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 48